

CIVIL LAW

PART I

PERSONS AND FAMILY RELATIONS AND OBLIGATIONS AND CONTRACTS

FLERIDA RUTH P. ROMERO*

The 1972 Supreme Court decisions in the fields of Persons and Family Relations and Obligations and Contracts have not broken new ground. Rather, they have been the "salt of the earth" variety — basic and, therefore, ever vital.

PERSONS AND FAMILY RELATIONS

LEGAL SEPARATION

Effect of Death of One of the Spouses in an Action for Legal Separation—

In the case of *Lapuz v. Eufemio*,¹ the issue posed is whether the death of the plaintiff before final decree in an action for legal separation, abates the action. If it does, will abatement also apply if the action involves property rights?

Plaintiff, in the instant case, after filing a petition for legal separation on the ground of concubinage of her husband, and before the trial could be completed, died in a vehicular accident. She had also prayed for an order to deprive defendant of his share of the conjugal partnership profits.

An action for legal separation, according to the Supreme Court, is purely personal, it involving nothing more than the bed-and-board separation of the spouses. This fact the Civil Code recognizes in Article 100, by allowing only the innocent spouse and no one else to claim legal separation; and in its Art. 108, by providing that the spouses can, by their reconciliation, stop or abate the proceedings and even rescind a decree of legal separation already rendered. Being personal in character, it follows that the death of one party to the action causes the death of the action itself.

* Associate Professor of Law and Head, Division of Continuing Legal Education, U.P. Law Center.

¹43 SCRA 177 (1972).

How does this ruling affect the action involving property rights? It follows that a claim to property rights will not survive the death of the plaintiff, declared the Supreme Court, inasmuch as the resulting changes in property relations between the spouses after legal separation is decreed are solely the effect of said decree. In other words, without the decree, such rights do not come into existence, so that before the finality of a decree, these claims are merely rights in expectation. If death supervenes during the pendency of the action, no decree can be forthcoming, death producing a more radical and definitive separation; and the expected consequential rights and claims would necessarily remain unborn.

For instance, the effects mentioned in Art. 106 of the Civil Code such as the right to dissolution of the conjugal partnership of gains, the loss of right by the offending spouse to any share of the profits earned by the partnership or community, or his disqualification to inherit by intestacy from the innocent spouse as well as the revocation of testamentary provisions in favor of the offending spouse made by the innocent one are all rights and disabilities vested exclusively in the persons of the spouses. By their very nature, therefore, such claims and disabilities cannot be conceived as assignable or transmissible. These are not even claims which, under the Rules of Court, survive a deceased party.

Ancillary Remedies Not Barred by the Six-Month Suspension of Trial in Action for Legal Separation—

In the course of a suit for legal separation brought by the wife on grounds of concubinage of the husband, the former sought the issuance of a writ of preliminary mandatory injunction for the return to her of what she claimed to be her paraphernal property then under the administration and management of the latter. The respondent judge suspended the hearing of said petition on the basis of Art. 103 of the Civil Code which reads thus: "An action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition."

The Supreme Court, in directing respondent Judge to proceed without delay in hearing the motion for preliminary mandatory injunction, clarified the scope of the suspension of trial for six months. It proceeded first to point out that the cooling-off period within which the court is to remain passive is intended to give the parties an opportunity to settle their differences by themselves. This is one instance when delay is permissible so that the "healing balm of time" may aid in the process of reconciliation.

At the same time, the law remains cognizant of the need in certain cases for judicial power to assert itself, thus easing the absolute limitation imposed by law on the courts. For instance, the question of management

of their respective property need not be left unresolved, especially where, as in this case, the husband whom petitioner accuses of concubinage and of an attempt on her life would continue in the management of what she alleged to be her paraphernal property.²

CONJUGAL PARTNERSHIP

Presumption in Favor of Conjugal Character of Properties Upheld—

In the course of determining the ownership of certain properties which formed part of the vast estate of deceased, the Court, relying on Art. 160 of the Civil Code, held the same conjugal in character on the basis of inventories made which constituted clear admissions against the pecuniary interest of the declarants. The evidence to support the claim that these were exclusive properties of the deceased husband consisted merely of self-serving statements which were not admissible in the absence of cross-examination.³

Wife not Authorized to Bind Conjugal Partnership

Illustrative of Article 172 of the Civil Code which provides that "The wife cannot bind the conjugal partnership without the husband's consent except in cases provided by law" is the case of *Zulueta v. Pan American World Airways, Inc.*⁴

Defendant carrier herein was ordered by the Supreme Court to pay moral and exemplary damages to the Zulueta family for breach of contract owing to the off-loading of Rafael Zulueta in Wake Island, coupled with the abusive conduct of its employees. Mrs. Zulueta filed a motion praying that the case be dismissed insofar as she was concerned inasmuch as she has entered into a satisfactory compromise settlement with PANAM, and she has been living separately from her husband for two years.

Invoking Article 172 quoted above, the Supreme Court denied the motion inasmuch as the husband brought the present action not only in his capacity as the person principally aggrieved but also as administrator of the conjugal partnership. Moreover, he used conjugal partnership funds in entering into the contract of carriage and the damages awarded for the breach of said contract likewise belong to the partnership.

Article 113 which provides that "the husband must be joined in all suits by or against the wife, except: x x x (2) if they have in fact been separated for at least one year x x x" is inapplicable here. What it con-

² *Somosa-Ramos v. Vamenta, Jr.*, 46 SCRA 110 (1972).

³ *De Borja v. Vda. de Borja*, 46 SCRA 577 (1972).

⁴ 43 SCRA 397 (1972).

templates is a situation where the wife is the real party in interest, whether as plaintiff or defendant and without being so, the husband must be joined as a party, by reason only of his relation of affinity with her.

Disposition by Wife of Conjugal Property

Where a surviving wife disposed of conjugal property under a *pacto de retro* sale, she shall be deemed to have disposed only of her share in the lot plus her successional right as heir in the conjugal share of her deceased husband. Consequently, the vendee a *retro* cannot legally petition for the consolidation of his ownership over the entire lot.⁶

PATERNITY AND FILIATION

Parens Patriae

In the case of *Nery v. Lorenzo*,⁶ the sale of a parcel of land by their widowed mother was questioned by the minor children who were not informed of such a move even though the probate court had authorized the sale of the same.

The Supreme Court, in according full recognition to the rights of the minors, declared that "their stage of immaturity calls for every procedural principle being observed before their interest in property to which they have a claim could be adversely affected" and it does not matter that their guardian is their mother.

"Moreover, where minors are involved, the State acts as *parens patriae*. To it is cast the duty of protecting the rights of persons or individuals who, because of age or incapacity, are in an unfavorable position, *vis-a-vis* other parties. Unable as they are to take due care of what concerns them, they have the political community to look after their welfare."

Support to an Illegitimate Child Pending Appeal

Where the trial court rendered judgment establishing the illegitimate child's right to support, the latter is entitled to the same even while the appeal is pending. "Indeed, there may be an instance where, in view of the poverty of the child, it would be a travesty of justice to refuse him support until the decision of the judge is sustained on appeal," the Supreme Court stated.⁷

⁶ *Yturralde v. Court of Appeals*, 43 SCRA 313 (1972).

⁶ 44 SCRA 431 (1972).

⁷ *Ramos v. Court of Appeals*, 45 SCRA 604 (1972).

OBLIGATIONS AND CONTRACTS

CONTRACTS

The Nature of a Contract

In resolving the issue as to whether a contract arose in the case of *Batchelder v. Central Bank*,⁸ the Supreme Court was constrained to refer to the fundamental principles of contracts.

The crucial question presented by the defendant Central Bank of the Philippines upon appeal was whether or not the issuance of a monetary policy by it, thereafter implemented by the appropriate resolutions, as to the rate of exchange at which dollars after being surrendered and sold to it could be re-acquired, created a contractual obligation.

Taking off from the basic definition that a contract is a meeting of minds between two persons whereby one binds himself with respect to the other to give something or render some service⁹ and quoting generously from local and foreign legal luminaries in the field of Civil Law, the Supreme Court arrived at the conclusion that under the circumstances, there could not have been a contract in law giving rise to an obligation which must be fulfilled by the Central Bank. Consent to being bound by a contractual commitment could not possibly be deduced from the mere issuance by a governmental body of resolutions in pursuance of its rule-making power.

The lack of such consent was underscored picturesquely with this quotation: "One contracts an obligation as one contracts pneumonia or any other disability. Contract is that part of our legal burdens that we bring on ourselves."¹⁰

This is not to preclude the exercise of the power of the Central Bank to enter into a contract had it wished to do so, for as a public corporation, it was endowed with such power. In the instant case, it did not do so.

Mutual Desistance as a Means of Extinguishment of Obligations

Plaintiff company applied for an industrial loan from the former Rehabilitation Finance Corporation (RFC) for the construction of a factory which would manufacture jute sacks from purely locally grown raw materials, principally *kenaf*. It appears that there resulted a perfected consensual contract of loan for the application was approved by resolution

⁸ 44 SCRA 45 (1972).

⁹ Art. 1305 of the Civil Code of the Philippines.

¹⁰ *Ibid.*, at p. 54.

of the defendant corporation and the corresponding mortgage was executed and registered.

Subsequently, however, plaintiff company, realizing that it was in no position to comply with RFC's conditions, did not pursue the matter further, but instead asked that its mortgage be cancelled, which cancellation was executed by the RFC.

Almost nine years after said cancellation, plaintiff company commenced suit for damages for failure of the RFC to comply with its obligation to release the proceeds of the approved loan, thereby preventing the plaintiff from paying contractual commitments it had entered into.

The trial court rendered judgment for the plaintiff on the ground that there being a perfected contract between the parties, the defendant was guilty of a breach thereof.

In reversing the lower court, the Supreme Court conceded that there was indeed a perfected consensual contract as recognized in Art. 1934 of the Civil Code,¹¹ but the parties extinguished the same by mutual desistance on the initiative of plaintiff-company itself. This mode of extinguishing obligations is a concept that derives from the principle that since mutual agreement can create a contract, mutual disagreement by the parties can cause its extinguishment.¹²

Breach of Contract—

In a contract to sell three parcels of land, the vendee, Maritime Bldg. Co., defaulted in the payment of certain monthly installments. As a consequence, the vendor, Myers Building Co., Inc., gave notice that it was cancelling the Deed of Conditional Sale and demanded the return of the possession of the properties as well as payment for its use and occupation. Under the terms of the contract, the vendor was explicitly given the option to annul the same and consider all payments made by the vendee as forfeited upon failure to pay any of the installments due and payable. Maritime Building Co., in this case, had already made payments amounting to ₱973,000,000 leaving only a balance of ₱319,300.65.¹³

The Supreme Court held that the suspension of the payment of installments by the vendee cannot be construed in any way other than as a breach

¹¹ Art. 1934: An accepted promise to deliver something by way of commodatum or simple loan is binding upon the parties, but the commodatum or simple loan itself shall not be perfected until the delivery of the object of the contract.

¹² Saura Import & Export Co., Inc. v. Development Bank of the Philippines, 44 SCRA 445 (1972).

¹³ Luzon Brokerage Co., Inc. v. Maritime Bldg. Co., Inc. 43 SCRA 93 (1972)

of contract tainted with fraud or malice (*dolo*) as distinguished from mere negligence (*culpa*), "*dolo*", being defined as a "conscious and intentional design to evade the normal fulfillment of existing obligations." Letters presented as Exhibits left no room for doubt that the appellant-vendee, in failing to make payments, was attempting to burden the vendor Company with an uncollectible debt since enforcement thereof against the estate of F.M. Myers was already barred.

It having been established that Maritime Building Co. was in bad faith, it was not entitled to ask the Court to give it further time to make payment and erase the breach it had deliberately incurred.

In determining whether Maritime Building Co. was liable or not, the Supreme Court said that the extent of the breach is immaterial. This factor becomes relevant only in contracts of absolute sale where ownership is immediately transferred and therefore, non-payment is in the nature of a resolutive condition. In the instant case, what is in question is a contract to sell denominated "Conditional Sale" where ownership is retained by the vendor and is not to pass to vendee until full payment of the price is made, such payment being "a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force."¹⁴

It should be stressed here that, in suing to recover possession of the building from vendee Maritime Building Co., the vendor was not after the resolution or setting aside of the contract and restoration of the parties to the *status quo ante*, but precisely enforcing the provisions of the agreement that it is no longer obligated to part with the ownership or possession of the property because the former failed to comply with the specified condition precedent, which is to pay the installments as they fell due. This point was one of the grounds taken into consideration by the Supreme Court when it denied the motion for reconsideration later filed by appellant/vendee.¹⁵

In this connection, the Supreme Court reiterated its doctrine that "a judicial action for the rescission of a contract is not necessary where the contract provides that it may be revoked and cancelled for violation of any of its terms and conditions."¹⁶ The obvious remedy of the party opposing the rescission for any reason is to file the corresponding action to question the rescission and enforce the agreement.¹⁷

¹⁴ Manuel v. Rodriguez, 109 Phil. 1 (1960).

¹⁵ 46 SCRA 381 (1972).

¹⁶ Lopez v. Commissioner of Customs, 37 SCRA 327 (1971).

¹⁷ U.P. v. de los Angeles, 35 SCRA 107 (1970).

Reciprocal Obligations

The issue in the case of *Nietas v. Court of Appeals*^{17a} whether petitioner/lessee in a contract of lease with option to buy an educational institution complied with his obligations thereunder as to justify his demand for specific performance of respondent/lessor's obligation to execute in his favor a deed of absolute sale of the leased property.

Reversing the Court of Appeals, the Supreme Court declared that the lessee had validly and effectively exercised his option to buy the property when he made payments well within the period of the contract of lease although he was actually short by P243.00 of the amount due on the last date of payment, but he may be considered as having complied substantially with the terms agreed upon. It was found to be undisputed that the lessor, upon receiving sums in excess of the amount representing the rentals for the entire period of the lease issued receipts in one of which he referred to said amount as a "partial payment on the purchase of the property."

Moreover, the Supreme Court stressed that the lessee, in case he decides to exercise his option to buy the property in question, need not pay the stipulated price beforehand, in consonance with the general principle governing reciprocal obligations embodied in Article 1169 which partly reads: "In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins."

Applying the above provision of law to the facts on hand, the Supreme Court said:

In the case of an option to buy, the creditor may validly and effectively exercise his right by merely advising the debtor of the former's decision to buy and expressing his readiness to pay the stipulated price, provided that the same is available and actually delivered to the debtor upon execution and delivery by him of the corresponding deed of sale. Unless and until the debtor shall have done this the creditor is not and cannot be in default in the discharge of his obligation to pay. In other words, notice of the creditor's decision to exercise his option to buy need not be coupled with actual payment of the price, so long as this is delivered to the owner of the property upon performance of his part of the agreement.

Hence, lessee who is the creditor in this contract of lease with option to buy, in depositing his checks in the bank, may have had the intent merely to show his ability to pay the balance of the sum due. His with-

^{17a} G.R. No. 32873, August 18, 1972; 46 SCRA 654 (1972)

drawal thereof could not possibly have affected the result of the present case.

Option to Sell

In *Sanchez v. Rigos*,¹⁸ the Supreme Court firms up its position on the nature and consequences of an accepted unilateral promise or option to sell by reconciling Arts. 1324 and 1479 of the Civil Code.¹⁹ Thus, the doctrine pronounced in *Atkins Kroll and Co., Inc. v. Cua Hian Tek*²⁰ is the law on the point at present.

Where under the terms of an instrument entitled "Option to Purchase", one of the parties obligates herself to sell to the other property within two years with the understanding that said option shall be deemed "terminated and elapsed" if the latter shall fail to exercise his right to buy the property within the stipulated period, the former cannot reject the tender of payment made in time by alleging that, it being a unilateral promise to sell unsupported by any valuable consideration, the same is null and void.

The Supreme Court, applying Art. 1324 which it stated is, in reality, in harmony with Art. 1479, treated the offeror's promise as an option which, although not binding as a contract in itself for lack of a separate consideration, nevertheless, generated a bilateral contract of purchase and sale upon acceptance.

Inapplicability of Art. 1397 to Representative Suit Filed to Annul Contract

Art. 1397 of the Civil Code which provides that "the action for the annulment of contracts may be instituted (only) by all who are thereby obliged principally or subsidiarily" should not be applied to a case where the city councilors of practically an entire City Council filed a complaint as a representative suit on behalf and for the benefit of the city to declare null and void a P3-million contract executed by the City Mayor without legal authority.²¹

Interpretation and Construction of Contracts

The Supreme Court's efforts to avoid an interpretation of a contract that would work injustice instead of promoting justice and at the same time apply the fundamental principle in contract interpretation that where

¹⁸ 45 SCRA 368 (1972).

¹⁹ Art. 1324: When the offeror has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon a consideration, as something paid or promised.

Art. 1479: X X X

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price.

²⁰ 102 Phil. 948 (1958).

²¹ City Council of Cebu City v. Cuizon 47 SCRA 325 (1972).

the literal wording conflicts with the intention, the latter shall prevail, found full flowering in *Borromeo v. Court of Appeals*.²²

In the instant case, a creditor, now represented by his heirs, sought payment from his debtor twenty years after the debt was incurred. If the former had not filed any complaint within ten years from the execution of the promissory note, it was indisputably proved to be due to the understanding between the parties who were good friends.

As explicitly stated in the instrument of indebtedness, the debtor relinquished, renounced, and waived his rights to the prescription established by the Code of Civil Procedure for the collection of the debt. Besides, the creditor knew that there was no property registered in the debtor's name and the latter had assured the former that he could collect even after the lapse of ten years. In fact, it was shown that the creditor limited himself to verbal requests upon the debtor to settle his indebtedness within the first ten years.

How is the waiver of prescription to be interpreted?

Certainly, not through a literal interpretation of the terms of the contract, declared the Supreme Court, for whatever obscurity may have been occasioned by the words should be illumined by the close friendship between the parties.

The Court said: "There is nothing implausible in the view that such language renouncing the debtor's right to the prescription established by the Code of Civil Procedure should be given the meaning . . . that the debtor could be trusted to pay even after the termination of the ten-year prescriptive period."²³

Hence, the first ten years after the incurring of the debt should be excluded. Thereafter the prescriptive period can be construed to start running. The creditor, having filed his complaint a few months before the expiration of said prescriptive period, was not yet barred by the statute of limitations.

A contrary interpretation would amount "not to just negating an agreement duly entered into, but would put a premium on conduct that is hardly fair and could be characterized as duplicitous for the debtor would be permitted to repay an act of kindness with base ingratitude."

Other principles of contract interpretation applied were those on separability of clauses in such a way as to save the valid provisions when such separation can be made at all; and that a stipulation in a contract

²² 47 SCRA 65 (1972).

²³ *Ibid.*, at pp. 70-71.

should be impressed with the characterization the law places on it in much the same way that it is the law that determines the nature of a contract and not the name or title given it by the parties; and that in the determination of the rights of the contracting parties, the interests of justice and equity should not be ignored.

Interpretation of an Insurance Contract.

Resort was again made to the cardinal principles of contract interpretation and construction in the case of *Landicho v. Government Service Insurance System*²⁴ where the pivotal question was whether or not the insurance policy concerned had been in force, not a single premium having been paid thereon.

In deciding for the heirs of the insured, the Supreme Court had to apply the principle that the interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity, in this case, the insurance company. Citing *American Jurisprudence*,²⁵ it stated: ". . . the terms in an insurance policy which are ambiguous, equivocal, or uncertain x x x are to be construed strictly and most strongly against the insurer, and liberally in favor of the insured so as to effect the dominant purpose of indemnity or payment to the insured, especially where a forfeiture is involved." The reason for this rule is that "the insured usually has no voice in the selection or arrangement of the words employed and that the language of the contract is selected with great care and deliberation by experts and legal advisers employed by, and acting exclusively in the interest of, the insurance company."²⁶ In other words, the nature of an insurance contract as a contract of adhesion was taken into account by the Court in arriving at its decision.

TRUSTS

Interpretation of an Express Trust

Almost half a century after the 1924 decision of the Supreme Court in *Government of the P.I. v. Abadilla*,²⁷ comes *Palad v. Governor of Quezon Province*²⁸ involving the heirs and successors-in-interest of the trustor, Luis Palad, in the former case.

As constituted by the last will and testament of the deceased, Luis Palad, the provincial governor of Quezon Province was designated trustee and/or administrator with the municipality of Tayabas as beneficiary of

²⁴ 44 SCRA 7.

²⁵ 29 Am. Jur. 181.

²⁶ 44 C.J.S. p. 1174.

²⁷ 46 Phil. 642 (1924).

²⁸ 46 SCRA 354 (1972).

two lots, the income of which was to be used to establish a high school for the inhabitants of the said municipality. Plaintiffs who claimed to be the surviving heirs of the deceased Palad now seek a termination of the trusteeship and a reversion of the lots to them due to the fact that the purpose of the trust had been fulfilled with the establishment of the high school which is now self-supporting.

Invoking their 1924 decision in the parent case, the Supreme Court reiterated that "the testator proposed to create a trust for the benefit of a secondary school to be established in the town of Tayabas, naming as trustee x x x the civil governor of the province of Tayabas (now Quezon) x x x." and that "if the trustee holds the legal title and the devise is valid, the natural heirs of the deceased have no remaining interest in the land except their right to the reversion in the event the devise for some reason should fail, an event which has not as yet taken place. From a reading of the testamentary clause under discussion it seems quite evident that the intention of the testator was to have the income of the property accumulate for the benefit of the proposed school until the same should be established."²⁹

Appellants, in the case at bar, however, pounced on the last statement of the paragraph above-cited and gave it the interpretation that upon the establishment of the school in 1932, the trust ceased.

The word "established", according to the Supreme Court, however, should not be accorded a restrictive meaning as to limit it to the initial construction of the high school as this alone would not serve the purpose of the testamentary disposition of the testator. To afford the residents of the town of Tayabas full enjoyment of the school, the same should be fully operational; hence, the testator willed that the income from the two lots should be utilized for the maintenance and expansion of the physical plants as well as the hiring of such faculty members and administrative staff as may be called for by the increased enrollment and the requirements of efficient instruction.

The devise, not having failed inasmuch as the school continued to operate with the income from the trust properties as well as donations from the government and other sources, the claimed reversion to the appellants is unwarranted.

Effect of Conversion of Implied Trust to an Express Trust

*Tamayo v. Callejo*³⁰ underscores the importance of distinguishing express from implied trusts, for in the former, the action to enforce the

²⁹ 46 Phil. 642 (1924).

³⁰ 46 SCRA 27 (1972).

trust does not prescribe as long as there is no express repudiation of the trust by the trustee and made known to the beneficiary; hence laches does not apply. In implied trusts, however, inasmuch as the so-called trustee does not recognize any trust and has no intent to hold for the beneficiary, the latter is not justified in delaying action to recover his property. If he so delays, his action may be barred by laches or by extinctive prescription.

In the instant case, respondent sought a reconveyance of a parcel of land which he bought from petitioner's parents but which was inadvertently included in the Certificate of Title covering petitioner's lands by anchoring his claim on the fact that petitioner held the land in trust for him. The petitioner argued that if said erroneous inclusion in his Certificate of Title of land belonging to respondent created, by operation of law an implied trust, the corresponding action for reconveyance nonetheless prescribed ten years from the accrual of the cause of action, which is when the title was issued. Therefore, respondents' action to enforce the trust has prescribed.

The Supreme Court, however, took the stand that if such erroneous inclusion of respondent's land in petitioner's Certificate of Title initially created an implied trust, it was converted into an express trust about three years thereafter when petitioner explicitly acknowledged in a public instrument the sale of the said land made by his parents to respondent's predecessor-in-interest and bound himself further to defend such title against any claims whatsoever.

Thus converted into an express trust by the will of the parties, it was no longer subject to the statute of limitations until and unless repudiated. Respondent's action for reconveyance could not, therefore, have been barred by extinctive prescription or laches.