Civil Law Comment

POSSESSOR IN BAD FAITH'S RIGHT TO RECOVER EXPENSES: CRITIQUE OF COMMENTARIES, DECISIONS AND THE PRESENT LAW

ESTEBAN B. BAUTISTA*

By the principle of accession, the ownership of property extends to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially.[1]

Extension of ownership to the products of a thing owned is known as *accession discreta,* the divisions and incidents of which are more specifically treated in Articles 441 to 444 of the new Civil Code, formerly Articles 354 to 357 of the old (Spanish) Civil Code.

Extension of ownership to what is incorporated or attached to the thing, either naturally or artificially, is known as *accession continua,* and is more specifically treated in Articles 445 to 465 (with respect to immovable property) and in Articles 466 to 475 (with respect to movable property). Articles 445 to 450 correspond to Articles 358 to 360 of the old Civil Code; and except for Articles 451, 452, 454, 456 and 457 (which are new), Articles 453 to 474 correspond to Articles 364 to 383 of the old Civil Code.

One question that has been raised is the application of Article 443 with respect to a possessor in bad faith. This article provides that he who receives the fruits has the obligation to pay the expenses made by a third person in their production, gathering and preservation.

Commentators of the old (Spanish) Civil Code would make a distinction as to whether or not the fruits have been gathered at the time the owner recovers possession of the property from the possessor in bad faith. If the fruits are still ungathered at that moment, they opine that no expenses of production need be reimbursed by the owner because the fruits, being still attached to or part of the immovable, pass to the owner by *accession continua* and pursuant to Article 449, the possessor in bad faith loses what has been planted or sown, without right to any indemnity whatsoever. But if the fruits have already been gathered or severed, the principle of *accession continua* no longer applies; Article 443 will apply. Hence, these

* *Head,* Division of Research and Law Reform, University of the Philippines Law Center; *Professorial Lecturer,* University of the Philippines College of Law.

[1] CIV. CODE, Art. 440.

commentators reason out, the possessor in bad faith is entitled to reimbursement of, and may deduct, his expenses of cultivation, gathering and preservation. The possessor's bad faith provides no excuse to the owner because Article 443 makes no distinction as to good faith and bad faith and is intended to prevent unjust enrichment at the expense of another. Article 443, according to them, establishes the general rule, and article 449 the exception.[2]

This view has been adopted by our Supreme Court and Court of Appeals as well as by our local commentators[3] without exception.

Thus in *Tacas v. Tabon*,[4] although the defendant was required to return the fruits he received from the time he filed his answer in 1917 up to the rendition of judgment in 1927, during which period he was held to have possessed the litigated property in bad faith, he was granted the right to deduct the expenses of planting and harvesting. Although the Court did not cite any commentator to support its holding, it made reference to Article 356 of the old Civil Code, now Article 443 of the new Civil Code.

It was in *Jison v. Hernaez*[5] that the Supreme Court, speaking through Justice Bocobo, cited Manresa[6] for its observation that

> [i]f at the time possession of the disputed property is returned to the owner thereof the crops planted by the person losing possession had already been separated from the land, the owner is under obligation to reimburse the person from whom he obtains possession for the expenses of production, gathering and preservation of the fruits, in accordance with Article 356;[7] but if at the time the owner obtains possession the crops have not yet been gathered, the person who planted them in bad faith loses them without the right to any reimbursement in accordance with Article 362.[8]

It, however, held the appellant in that case not entitled to any reimbursement because it was not he who gathered said crops but the receiver appointed by the trial court, whose acts inured to the benefits of the prevailing party.

Similarly, the Court of Appeals, in *Dimzon v. Rivera*,[9] held that:

> Although the defendant was a possessor in bad faith since 1933 and, consequently, should account for the products of the land, still he should be reimbursed the cost of production, such as the expenses incurred by him in planting and harvesting, in accordance with the provisions of article 356 of the [old] Civil Code, as interpreted by the courts and by

---

2 MANRESA 197, 219-220; BORREL Y SOLER, DOMINIO 318-329.

3 II TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILPPINES 97 (1983); II PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED 151-152 (1975); II PADILLLA, CIVIL CODE ANNOTATED 152 (1965); II FRANCISCO, CIVIL CODE OF THE PHILIPPINES ANNOTATED AND COMMENTED 152-153 (1949); ABAD SANTOS, PROPERTY 75 (1958).

4 53 Phil. 356, 363 (1929).

5 74 Phil. 66 (1942).

6 3 MANRESA, *supra* note 2, at 215, 216.

7 Now Article 443 of the new Code.

8 Now Article 449 of the new Code.

9 39 O.G. (No. 71) 1744, 1746 (1941).

> that great authority and commentator on said code, Manresa. True, article 362 of the same code provides that any person who plants or sows in bad faith on another's land shall lose that which he has planted or sown, without right to compensation, but this legal provision has equally been interpreted to apply only to grain and other crops still standing on the land and does not refer to products already gathered and harvested, as was the sugar cane grown on the premises.

Venerable though its originators and adherents are, it is submitted that the view thus adopted by our highest courts and our own commentators is vulnerable on various grounds.

Firstly, it confuses the concept of *accession discreta* with that of *accession continua.* It loses sight of the fact that in *accession discreta* the factor that determines ownership of the fruits is the fact that they are produced by one's property. It is immaterial whether or not they have already been detached or severed from the property that produces them. Even when already severed, the fruits still belong to the owner of the property that produced them for the simple reason that it was his property that produced such fruits. It is thus *malapropos* to state that as long as fruits have not been gathered or severed, Article 449 applies and hence not only will the possessor in bad faith lose what he has planted or sown, but also the right to any indemnity.

Secondly, as a result of this grave confusion of concepts, it cannot be correctly maintained, as the originators and adherents of the view in question do, that Article 443 states a general rule and Article 449 an exception. The Code's scheme makes it quite clear that Article 443 states a principle that applies solely to *accession discreta.* This is why it is subsumed under Section 1, Chapter 2 of Book II of the Code, which section is entitled "Right of Accession with Respect to What is Produced by Property." Article 449, on the other hand, states a rule of *accession continua,* being subsumed under Section 2 ("Right of Accession with Respect to Immovable Property") and one of the articles referred to in Article 445 when it states that "[w]hatever is built, planted or sown on the land of another and the improvements or repairs made thereon, belong to the owner of the land, subject to the provisions of the *following articles.*"[10] Since they pertain to entirely different concepts—to two different kinds of accession—one of these two articles (443 and 449) cannot be considered as stating a general rule to which the other is an exception.

---

[10] Emphasis supplied. This analysis coincides with, and finds support in, the opinion of Justice (later Chief Justice) Concepcion in *Lao Chit v. Security Bank & Trust Co.,* wherein the following pronouncements were made:

"In order to justify the application of the principle that no one should be permitted to unjustly enrich himself at the expense of another, His Honor the Trial Judge cited Article 356 of the Civil Code of Spain, which provides:

'He who receives fruits is obliged to pay any expenses which may have been incurred by another in the production, gathering, and preservation thereof.'

"We agree with the lessor that this Article is not in point, for:

"(a) Said provision is part of Section I, Chapter II, Title II, Book II, of the Spanish Civil Code, which section regulates the 'right of accession with respect to

Thirdly, the proposition that the recovering owner cannot take shield behind the possessor's bad faith because Article 443 makes no distinction as to good faith and bad faith and seeks to prevent unjust enrichment on his part can easily be reduced to absurdity. For, if this were so, then why not likewise require reimbursement of at least cultivation expenses in the case where the fruits have not been gathered, since to that extent there would also be unjust enrichment on the part of the recovering owner? Are not the proponents of the view in question making an unjustifiable distinction?

The truth of the matter is that at the time the view in question was originated—i.e., under the old (Spanish) Civil Code—the law did not consider the principle of unjust enrichment applicable or available to a possessor in bad faith in the sense that he had no right to be reimbursed his expenses whether they are incurred relative to accession *continua* or to accession *discreta.* With respect to accession *continua,* Article 362 of the old Civil Code (now Article 449 of the new Civil Code) expressly denied him that right. With respect to accession *discreta,* Article 455 of the old Code (now amended by Article 549 of the new Code) also clearly denied him that right when it provided that a "possessor in bad faith shall pay for the fruits received and for those which the lawful possessor might have received, and *shall be entitled only to reimbursement* for the necessary expenditures made for the preservation of the thing." Expenses of cultivation, gathering and preservation of the fruits are clearly not the same as the expenses for the preservation of the thing that produces them.

There is a fundamental reason for this refusal of the Old Code to extend the benefits of the principle against unjust enrichment to a possessor in bad faith. It is that this principle is a principle of equity and underlying it is the public policy that he who seeks equity must do so with clean hands. As a violator of the principle against enrichment, a possessor in bad faith cannot be justly allowed to claim that the lawful possessor or owner, whom he had unjustly deprived of enjoyment of his property, would be unjustly enriched by his act.

Besides, it is manifestly not good public policy to allow under any circumstance the possessor in bad faith to reimbursement of his expenses of production, gathering and preservation for it is likely to encourage taking possession of property in bad faith. For then the possessor will not have much, if anything, to lose. On the contrary, he can only expect to gain. He will not only be reimbursed his expenses for the preservation of the thing possessed; he will be reimbursed the expenses incurred with respect to the fruits, if he is able to gather them before possession is

---

the *products* of the property,' and the work done and the improvements introduced by Lao Chit are not 'products' of the lessor's property.

(b) Said Article 356 refers to '*expenses* of production, gathering and preservation' of *fruits* received by the owner of a property not to improvements, whereas the claim of Lao Chit is based upon 'improvements' introduced, not 'expenses' incurred by him for the 'production, gathering and preservation' of fruits."

recovered by the owner. With this knowledge, he will naturally take his chances, risk being caught and try his best to gather the fruits before that happens.

It is thus evident that the view of Manresa and the other commentators of the old (Spanish) Code was erroneous.

Unfortunately, that error was not only adopted by our highest courts and our own commentators but has been embodied in the new Code, which is not surprising because the chairman of the Code Commission that drafted it shared that view, having been the one who, as a justice of the Supreme Court, penned the decision in *Jison v. Hernaez*.[11] It is now enshrined in Article 549 of the new Code which provides:

> Art. 549. The possessor in bad faith shall reimburse the fruits received and those which the legitimate possessor could have received, and shall have the right only to the expenses mentioned in paragraph 1 of article 546 and in article 443. The expenses incurred in improvements for pure luxury or mere pleasure shall not be refunded to the possessor in bad faith; but he may remove the objects for which such expenses have been incurred, provided that the thing suffers no injury thereby, and that the lawful possessor does not prefer to retain them by paying the value they may have at the time he enters into possession. (455a)

By granting to a posseessor in bad faith the rights to be reimbursed the expenses referred into in Article 443, the new Code practically obliterates any meaningful distinction between him and a possessor in good faith so far as reimbursement of expenses is concerned. The only meaningful distinction remaining is the right of retention, which is granted to a possessor in good faith and denied to a possessor in bad faith with respect to both necessary and useful expenses.[12] Beyond this, however, no practical difference exists any longer. For while Article 546 provides that "[u]seful expenses shall be refunded only to the possessor in good faith," it is settled that useful expenses includes all those incurred to give greater utility or productivity to the thing.[13] and include those made in connection with plantings and improvements in uncultivated land.[14] The expenses of production, gathering and preservation mentioned in Article 443 no doubt come within the concept of — or belong to the same category as — useful expenses under Article 546. The result is that, under the present law, what Article 546 withholds from the possessor in bad faith, Article 549 grants to him. The new Code is thus inconsistent in this respect, a defect which did not vitiate the old Code.

This inconsistency and defect will be removed if the reference to Article 443 in Article 549 is deleted and the clear, proper, and sound distincion under the old Code betweeen the right of a possessor in good faith and of a possessor in bad faith regarding reimbursement of expenses is restored.

---

[11] 74 Phil. 66 (1942).
[12] CIV. CODE, Art. 546.
[13] TOLENTINO, *supra*, note 3, at 261.
[14] Valenzuela v. Lopez, 51 Phil. 279 (1927).