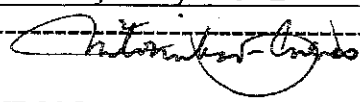


EN BANC

G.R. No. 256141 (BELINDA ALEXANDER, *petitioner, versus* SPOUSES JORGE AND HILARIA ESCALONA, and REYGAN ESCALONA, *respondents.*)

Promulgated:

July 19, 2022

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CONCURRING OPINION

CAGUIOA, J.:

Confronted with a scenario where the husband disposed of conjugal property without the benefit of his wife's consent during the effectivity of the Family Code in a marriage that was celebrated prior to its enactment, the Court has already previously held,<sup>1</sup> as the *ponencia* seeks to propose with clarity, the following guidelines:

Thus, it is an opportune time for the Court to clarify any confusion besetting the applicable laws and jurisprudence in transactions involving alienation or encumbrance of conjugal properties, without consent of the other spouse, which is determinative of the remedies available to the aggrieved parties and the prescriptive period of actions. At this juncture, the Court holds that more than the date of the marriage of the spouses, the applicable law must be reckoned on the date of the alienation or encumbrance of the conjugal property made without the consent of the other spouse, to wit:

1. The alienation or encumbrance of the conjugal property, without the wife's consent, made before the effectivity of the Family Code, is not void but merely voidable. The applicable laws are Articles 166 and 173 of the New Civil Code. The wife may file an action for annulment of contract within ten (10) years from the transaction; and
2. The alienation or encumbrance of the conjugal property, without the authority of the court or the written consent of the other spouse, made after the effectivity of the Family Code is void. The applicable law is Article 124 of the Family Code without prejudice to vested rights in the property acquired before August 3, 1988. Unless the transaction is accepted by the non-consenting spouse or is authorized by

<sup>1</sup> *Strong Fort Warehousing Corp. v. Banta*, G.R. Nos. 222369 & 222502, November 16, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67127>>; *Spouses Anastacio, Sr. v. Heirs of Coloma*, G.R. No. 224572, August 27, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66519>>; *Boston Equity Resources, Inc. v. Del Rosario*, 821 Phil. 710 (2017); *Philippine National Bank v. Reyes, Jr.*, 796 Phil. 736 (2016); *Spouses Aggabao v. Spouses Parulan, Jr.*, 644 Phil. 26 (2010); *Spouses Fuentes v. Roca*, 633 Phil. 9 (2010); *Titan Construction Corp. v. Spouses David*, 629 Phil. 346 (2010); *Spouses Alinas v. Spouses Alinas*, 574 Phil. 311 (2008); *Homeowners Savings & Loan Bank v. Dailo*, 493 Phil. 436 (2005); and *Spouses Guiang v. Court of Appeals*, 353 Phil. 578 (1998).



the court, an action for declaration of nullity of the contract may be filed before the continuing offer on the part of the consenting spouse and the third person becomes ineffective.<sup>2</sup>

I fully concur.

*First*, I concur with the *ponencia*'s ruling that the litmus test in determining which between the Civil Code or the Family Code is applicable in the disposition of conjugal properties is the time of the questioned disposition, and not the time of the celebration of the marriage. This necessarily delimits the scope and qualifies the breadth of precedence of the Court's ruling in *Spouses Cueno v. Spouses Bautista*<sup>3</sup> (*Cueno*) *vis-à-vis* the case at bar. I also note that no prospective application may be claimed against this guideline since this Court has consistently held that dispositions of conjugal property after the effectivity of the Family Code made by a spouse without the written consent of the other is void under Article 124<sup>4</sup> of the same, even if the spouses were married prior to the effectivity thereof.

*Second*, I concur with the *ponencia*'s categorization that the remedy to impugn a void disposition under Article 124 of the Family Code is not imprescriptible, since the nature, effect and availability of the remedy therein are decidedly distinct from the remedy against void contracts under Articles 1409<sup>5</sup> and 1410<sup>6</sup> of the Civil Code.

Finally, and further to the *ponencia*'s ruling that Belinda Alexander (Belinda) is entitled to reimbursement and that she was not a buyer in good

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<sup>2</sup> *Ponencia*, p. 18.

<sup>3</sup> G.R. No. 246445, March 2, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67306>>.

<sup>4</sup> FAMILY CODE, Art. 124 provides:

ART. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for a proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

<sup>5</sup> ARTICLE 1409. The following contracts are inexistent and void from the beginning:

- (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
- (7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

<sup>6</sup> ARTICLE 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.



faith, I submit additional basis that root these pronouncements more firmly both in facts as well as in law.

*Applicability of the Family Code and its retroactive application*

First, on the matter of the determining factor with respect to the applicable law, the *ponencia* placed considerable stock on the Court's pronouncements in the recent case of *Cueno* in resolving the instant controversy. In *Cueno*, the Court refrained from making any bright-line rule as to whether the provisions of the Family Code apply to dispositions by the husband lacking the wife's consent made during its effectivity precisely because such was not the legal issue therein. The spouses in *Cueno* were married, and the subject properties disposed of, during the effectivity of the Civil Code. Hence, the Court rightfully saw it fit to resolve the issue within the confines of Article 166, in relation to Article 173, of the Civil Code and its established, yet then conflicting, judicial precedents.

*Cueno* was the result of a string of cases on the lack of the wife's consent in dispositions of conjugal property acquired and disposed of during the effectivity of the Civil Code which brought into application Article 166 of the Civil Code:

Art. 166. Unless the wife has been declared a *non compos mentis* or a spendthrift, or is under civil interdiction or is confined in a leprosarium, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. If she refuses unreasonably to give her consent, the court may compel her to grant the same.

This article shall not apply to property acquired by the conjugal partnership before the effective date of this Code.

Drawing from recognized civil law authorities on the provisions, the Court, in *Cueno*, pointed out:

Recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, explained:

Under the [Spanish] Civil Code the husband had full authority to alienate or encumber the conjugal partnership property without the consent of the wife. This rule has been changed in view of the new position of the wife under the [Civil] Code and for the purpose of protecting the wife against illegal or unlawful alienations made by the husband. In line with this purpose[,] alienations made by the husband of real properties cannot now be made without the consent of the wife except in cases provided for by law.

x x x Under our present Code all dispositions, alienations or encumbrances of conjugal real property acquired after the effectivity of the new Civil Code needs the



consent of the wife. Also, all donations of real or personal property require the consent of the wife except those to the common children for securing their future or finishing a career, and moderate donations for charity. But should the wife refuse unreasonably to give her consent, the court may compel her to grant the same.<sup>7</sup> (Citation omitted)

Sifting through the authorities, the Court, in *Cueno*, made the pronouncement that dispositions in violation of Article 166 of the Civil Code renders the sale voidable, not void.

To put an end to this recurring conflict on the proper characterization of such transactions, the Court now hereby adopts the second view espoused in *Villocino, Roxas, and Aguilar-Reyes* as the prevailing and correct rule, abandons all cases contrary thereto, and holds that a sale that fails to comply with Article 166 is not “void” but merely “voidable” in accordance with Article 173 of the Civil Code.

x x x x

Article 173 is unambiguous that the failure to secure the wife’s consent, when such consent is required, does not render the contract void. Contrary to the nature of void contracts, transactions that fail to comply with Article 166 *produce effects*. The time-bound nature of the remedy provided under Article 173, in contrast to the imprescriptible nature of void contracts, demonstrates the voidable character of such contracts since the failure to bring the action within the period provided renders the contract between the husband and the third-person *perfectly valid and binding*. *Vda. De Ramones v. Agbayani* already held that “the wife’s failure to file with the courts an action for annulment of the contract during the marriage and within ten (10) years from the transaction shall render the sale valid.” Indeed, even the right to demand the value of the property should the wife fail to exercise her right to annul confirms this voidable nature. If said transaction were void, the remedy would have been mutual restitution. Further, unlike void contracts that are subject to collateral attack by any interested party, the remedies available under Article 173 are expressly limited to the wife and, in proper cases, her heirs.<sup>8</sup> (Citations omitted)

The Court, in *Cueno*, clarified that for dispositions that fail to comply with Article 166 of the Civil Code due to lack of the wife’s consent, the contracts are merely voidable. As a remedy for this non-compliance, Article 173 of the Civil Code “unequivocally states that the action to annul the same must be brought 1) by the wife, 2) during the marriage, and 3) within ten (10) years from the questioned transaction.”<sup>9</sup> The logical extension of the precedent set by *Cueno* is that for Articles 166 and 173 of the Civil Code to apply, the disposition must have occurred when these provisions were in force, *i.e.*, prior to the effectivity of the Family Code.

<sup>7</sup> *Spouses Cueno v. Spouses Bautista*, supra note 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* Citation omitted.



At most, the Court in *Cueno*, in passing, noted the legislative intent of changing the characterization of dispositions without the benefit of spousal consent from voidable to void under the Family Code:

*Finally*, it bears reiterating that unlike Articles 166 and 173 of the Civil Code, the Family Code now expressly declares that alienations or encumbrances of community or conjugal property without the consent of the other spouse are null and void x x x[.]

x x x x

In *Guiang v. Court of Appeals (Guiang)*, the Court affirmed the observation of the RTC that the remedies afforded by Article 173 were not carried over to the Family Code, which thus signified the change in status of such transactions from the Civil Code to the Family Code. The Court agrees with the rationale in *Guiang* that the evident revisions under the Family Code are deliberate and confirm the legislative intent to change the status of such transactions from voidable under the Civil Code to void under the Family Code. However, the Court notes the special nature of these void transactions even under the Family Code, which can become binding contracts upon the acceptance by the other spouse or authorization by the court before the continuing offers are withdrawn by either or both spouses.<sup>10</sup> (Citations omitted)

In the instant case, the spouses were married during the effectivity of the Civil Code but the husband's sale of conjugal property challenged for lack of the wife's consent was made during the effectivity of the Family Code. As pointed out by the *ponente*, Associate Justice Mario V. Lopez, the instant case presents "a different factual *milieu*,"<sup>11</sup> and therefore calls for a separate rule to address the issue, as well as adds to the clarificatory precedent of the *Cueno* decision.

It is worth adding that Article 105 of the Family Code provides that its provisions also apply to conjugal partnership of gains that have been constituted during the effectivity of the Civil Code, subject to the limitations on retroactivity as provided for in Article 256 of the same Code, to wit:

ART. 105. In case the future spouses agree in the marriage settlements that the regime of conjugal partnership of gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application.

The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256.

(n)

x x x x

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<sup>10</sup> *Id.*

<sup>11</sup> *Ponencia*, p. 12.



ART. 256. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.

Pursuant to this clarification, the Court effectively notes in the case at bar that, while both Articles 105 and 256 of the Family Code contain an express limitation on its retroactive effect by providing that it must not prejudice or impair vested or acquired right, such limitation finds no relevance in this case since here, no vested right is involved. A vested right is some right or interest in property that had become fixed and established and is no longer open to doubt or controversy.<sup>12</sup> Rights are vested when the right to enjoyment, present or prospective, has become the property of some person as a person in interest.<sup>13</sup> Likewise unyielding is the general rule that a person has no vested right in any particular remedy.<sup>14</sup> Hence, a right should only be considered acquired or vested if its holder can actually exercise or make use of it at the time of the change in law. Otherwise, the concept of vested rights runs the risk of dilution and its protection ultimately impeded.

Plainly stated, therefore, no vested right may be claimed on the legal characterization of a sale as voidable and the corresponding remedies afforded under Article 173 of the Civil Code where, as here, no such sale was made prior to the Family Code. Specifically, the non-vestedness of any right to annul the void disposition, as in this case, is clear from the fact that the disposition in question did not take place until after a decade from the enactment of the Family Code.

Apropos is the Court's ruling in *Bernabe v. Alejo*<sup>15</sup> (*Bernabe*) where the Court held that the substantive right was only vested when the cause which gave rise to its assertion took place prior to the enactment of the change in the law, *viz.*:

Under the new law, an action for the recognition of an illegitimate child must be brought within the lifetime of the alleged parent. The Family Code makes no distinction on whether the former was still a minor when the latter died. Thus, the putative parent is given by the new Code a chance to dispute the claim, considering that "illegitimate children are usually begotten and raised in secrecy and without the legitimate family being aware of their existence. x x x The putative parent should thus be given the opportunity to affirm or deny the child's filiation, and this, he or she cannot do if he or she is already dead.

Nonetheless, the Family Code provides the caveat that rights that have already vested prior to its enactment should not be prejudiced or impaired as follows:

<sup>12</sup> *Director of Lands v. Court of Appeals*, 260 Phil. 477, 486 (1990).

<sup>13</sup> *Susi v. Razon*, 48 Phil. 424 (1925); *see also* 12 C.J., Sec. 485, p. 955 cited in *Balboa v. Farrales*, 51 Phil. 498, 502 (1928).

<sup>14</sup> *Tan, Jr. v. Court of Appeals*, 424 Phil. 556, 569 (2002).

<sup>15</sup> 424 Phil. 933 (2002).



“ART. 255. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.”

The crucial issue to be resolved therefore is whether Adrian’s right to an action for recognition, which was granted by Article 285 of the Civil Code, had already vested prior to the enactment of the Family Code. Our answer is affirmative.

A vested right is defined as “one which is absolute, complete and unconditional, to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency x x x.” Respondent however contends that the filing of an action for recognition is procedural in nature and that “as a general rule, no vested right may attach to [or] arise from procedural laws.”

*Bustos v. Lucero* distinguished substantive from procedural law in these words:

“x x x Substantive law creates substantive rights and the two terms in this respect may be said to be synonymous. [“]Substantive rights[”] is a term which includes those rights which one enjoys under the legal system prior to the disturbance of normal relations. Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtains redress for their invasion.” x x x

Recently, in *Fabian v. Desierto*, the Court laid down the test for determining whether a rule is procedural or substantive:

“[I]n determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the *judicial process for enforcing rights and duties recognized by substantive law* and for justly administering remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but *if it operates as a means of implementing an existing right then the rule deals merely with procedure.*”

**Applying the foregoing jurisprudence, we hold that Article 285 of the Civil Code is a substantive law, as it gives Adrian the right to file his petition for recognition within four years from attaining majority age. Therefore, the Family Code cannot impair or take Adrian’s right to file an action for recognition, because that right had already vested prior to its enactment.**<sup>16</sup> (Citations omitted, emphasis supplied)

As unequivocally held in *Bernabe*, “[t]he right to seek [compulsory] recognition granted by the Civil Code to illegitimate children who were still

<sup>16</sup> Id. at 940-942.

minors at the time the Family Code took effect cannot be impaired or taken away.”<sup>17</sup> In contrast, in the instant case, the right to challenge the void disposition had not vested since there was no void disposition to speak of at the time of the enactment of the Family Code.

With no right vesting or accruing, the challenged transaction that was made after the effectivity of the Family Code is not immune to the legal effects of the application of Articles 96<sup>18</sup> and 124 of the Family Code which now declare all dispositions or encumbrances of community or conjugal property without the consent of the other spouse void.

***In any case***, a closer look at the evolution of the right to seek a remedy in the face of a void disposition of a conjugal property between the Civil Code and the Family Code would demonstrably show that even if there was a right that did vest, there is no impairment of the same as the remedy so expressly provided in Articles 96 and 124 of the Family Code decidedly **enhanced the same and did not diminish it**. Particularly, the remedy in Article 124 of the Family Code took it out of a finite 10-year period, as it converted the void disposition to a continuing offer which may be impugned by the non-consenting spouse or confirmed by the court, as the case may be, prior to the withdrawal of said offer by either the consenting spouse or the third person.

The enhancement of the right of the non-consenting spouse to a remedy is also distilled in the pivotal consideration which underpinned Article 124 of the Family Code — the joint administration of the conjugal property. As renowned civilist Arturo M. Tolentino explains:

Under the Civil Code, the husband was the administrator of the conjugal partnership. The present article makes the husband and wife joint administrators. The provisions of this article are the same as those of Article 96 on the administration of the absolute community property. The sale of property of the conjugal partnership is void *ab initio* due to the absence of the wife’s consent, there being no showing that she is incapacitated. Being merely aware of a transaction is not consent.<sup>19</sup>

As further echoed by Justice Alicia V. Sempio-Diy, citing Justice J.B.L. Reyes, in her own annotation on the provision:

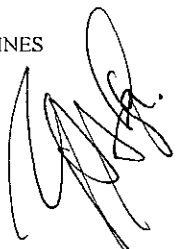
<sup>17</sup> Id. at 935.

<sup>18</sup> FAMILY CODE, Art. 96 provides:

ART. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband’s decision shall prevail, subject to recourse to the court by the wife for a proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance without the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

<sup>19</sup> Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES VOLUME ONE WITH THE FAMILY CODE OF THE PHILIPPINES, p. 461.





The Family Code is primarily intended to reform the family law so as to emancipate the wife from the exclusive control of the husband and to place her at parity with him insofar as the family is concerned. The wife and the husband are now placed on equal standing by the Code. They are now joint administrators of the family properties of their children. This means a dual authority in the family. The husband will no longer prevail over the wife but she has to agree on all matters concerning the family.<sup>20</sup>

In other words, there can be no impairment in the right to remedy against a void disposition of the conjugal property precisely because the new provision of Article 124 of the Family Code exactly responds to the unequal footing between the husband and the wife in matters of administration, with the said provision now making the remedy available to any non-consenting spouse. Under the Family Code, only the non-consenting spouse, to the exclusion of all others, may accept or reject the continuing offer of the void disposition.

*“Void” under Article 124 of  
the Family Code versus  
“void” under obligations  
and contracts*

Second, the *ponencia* appreciates that the action to seek the declaration of nullity of a void alienation of conjugal property is not imprescriptible, thus:

2. The alienation or encumbrance of the conjugal property, without the authority of the court or the written consent of the other spouse, made after the effectivity of the Family Code is void. The applicable law is Article 124 of the Family Code without prejudice to vested rights in the property acquired before August 3, 1988. Unless the transaction is accepted by the non-consenting spouse or is authorized by the court, an action for declaration of nullity of the contract may be filed before the continuing offer on the part of the consenting spouse and the third person becomes ineffective.<sup>21</sup>

I agree.

While using the same nomenclature of “void,” the distinction in treatment, effects and remedies of void contracts under Article 1409 in relation to Article 1410 of the Civil Code and the void disposition as described in Article 124 of the Family Code are unmistakable, so that the principles of the former must not be automatically superimposed over the latter.

For one, void contracts under Article 1409 of the Civil Code are deemed inexistent and are consequently incapable of perfection or ratification, to wit:

x x x The following contracts are inexistent and void from the beginning:

<sup>20</sup> Alicia V. Sempio-Diy, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES (1995), p. 216.

<sup>21</sup> *Ponencia*, p. 18.



- (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
- (7) Those expressly prohibited or declared void by law.

**These contracts cannot be ratified. Neither can the right to set up the defense or illegality be waived.** (Emphasis supplied)

In contrast, void dispositions under Article 124 of the Family Code, while also dubbed “void,” are expressly deemed as a continuing offer which may be perfected and accepted either by consent of the previously non-consenting spouse or by confirmation of the court, *viz.*:

ART. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband’s decision shall prevail, subject to recourse to the court by the wife for a proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. **However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.** (Emphasis supplied)

The nature of the “void” contract as a continuing offer susceptible of perfection through acceptance contemplated in Article 124 of the Family Code, is distinct from void contracts under Article 1409 of the Civil Code, with such difference further illustrated when the continuing offer is rendered impossible due to the death of the non-consenting spouse or offeree, as the Court resolved in the case of *Spouses Anastacio, Sr. v. Heirs of Coloma*,<sup>22</sup> *viz.*:

Since petitioners have not presented strong, clear, convincing evidence that the subject property was exclusive property of Juan, its alienation to them required the consent of Juliana to be valid pursuant to Article 124 of the Family Code, which provides in part:

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<sup>22</sup> Supra note 1.

## ART. 124. x x x

x x x These powers [of administration] do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. **In the absence of such authority or consent, the disposition or encumbrance shall be void.** However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. x x x

Under Article 1323 of the Civil Code, an offer becomes ineffective upon the death, civil interdiction, insanity, or insolvency of either party before acceptance is conveyed. When Juan died on August 26, 2006, the continuing offer contemplated under Article 124 of the Family Code became ineffective and could not have materialized into a binding contract. It must be remembered that Juliana even died earlier on August 17, 2006 and there is no evidence that she consented to the sale of the subject property by Juan in favor of petitioners.<sup>23</sup>

Even more tellingly, a previous draft Article 126 of the Family Code, which provided for a period within which the non-consenting spouse may question the void transaction, was deleted during the deliberations for the reason that the present Article 124 already covered such a scenario, thus:

## B. Article (126). –

Either spouse may, during the marriage, and within four years from discovery of the questioned transaction, ask the courts for the declaration of nullity of any contract of one spouse entered into without the other's consent, when such consent is required.

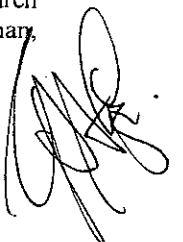
Whenever any act or contract of one spouse tends to defraud or impair the other's interest in the conjugal partnership, the defrauded spouse or his or her heirs, after the dissolution of the marriage, may demand the return of the value of the property fraudulently alienated for purposes of liquidation.

**Justice Caguioa remarked that the above Article may be deleted in view of the new Article 124 with which the other members agreed.**<sup>24</sup>  
(Emphasis supplied)

Clearly, therefore, while the action to impugn void contracts under Article 1409 of the Civil Code does not prescribe, the same may not be said of void contracts as contemplated under Article 124 of the Family Code. The former considers contracts that are not hemmed in by the particular

<sup>23</sup> Id.

<sup>24</sup> Minutes of the 175<sup>th</sup> Meeting of the Civil Code and Family Law Committees held on Saturday, 7 March 1987, 9:00 A.M., at the First Floor Conference Room of Bocobo Hall, U.P. Law Complex, Diliman, Quezon City, p. 28.



restrictions and rationale of the latter, which exist against the backdrop of a body of legal provisions that specifically apply to marriages.


Finally, I submit that the *ponencia* correctly found that Belinda is entitled to reimbursement not only on the basis of unjust enrichment<sup>25</sup> and pursuant to judicial economy,<sup>26</sup> but primarily because Belinda also filed a cross-claim against Reygan Escalona (Reygan).<sup>27</sup> Surely, there is really no more need for a separate suit since the cross-claim is the proper vehicle within which to grant the reimbursement. The Court may even impose legal interest on the reimbursement to be computed from the date of finality of judgment since Belinda's claim is akin to an unliquidated one.

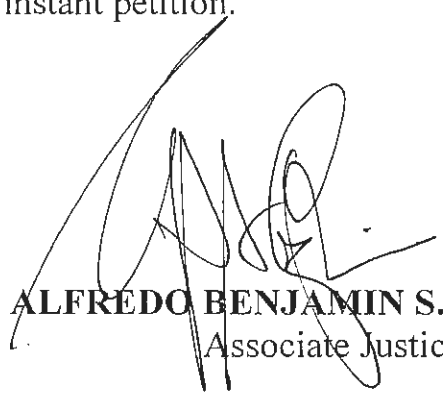
Relatedly, I similarly agree with the *ponencia*'s finding that Belinda was not a buyer in good faith since, apart from the waiver of Jorge Escalona (Jorge) in favor of Reygan (which served as the basis of Reygan's waiver in favor of Belinda), it must also be noted that the Spouses Escalona were actually in possession of the lots at the time of her purchase, which should have alerted her to investigate and inquire into the nature of said possession. Her failure or omission to inquire as warranted can only be attributed to her lack of good faith. This, in addition to the correct ruling of the *ponencia* that Belinda can hardly be deemed as a buyer in good faith for the reason that she merely steps into the shoes of Reygan,<sup>28</sup> who himself had no right or interest in his favor under the waiver, and who, therefore, had no right or interest to transfer or waive in favor of Belinda.

On this score, as well, it is fitting to recall and apply by extension that any contract arising from a void contract is also void, unless the defect in the earlier void contract is cured pursuant to Article 124 of the Family Code. As applied to this case, since the void disposition by Jorge here was not cured, any disposition, contract or waiver that rose from said original void disposition must, necessarily, be void as well.<sup>29</sup>

Bearing the foregoing reasons in mind, I concur with the *ponencia* and vote to **PARTLY GRANT** the instant petition.

CERTIFIED TRUE COPY

  
 MARIA LUISA M. SANTILLA  
 Deputy Clerk of Court and  
 Executive Officer  
 CCC-En Banc, Supreme Court

  
 ALFREDO BENJAMIN S. CAGUIOA  
 Associate Justice

<sup>25</sup> *Ponencia*, p. 21.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 2.

<sup>28</sup> *Id.* at 20.

<sup>29</sup> See CIVIL CODE, Art. 1422 which provides: "A contract which is the direct result of a previous illegal contract, is also void and inexistent."