EN BANC

G.R. No. 256141 – *Belinda Alexander v. Sps. Jorge and Hilaria Escalona and Reygan Escalona*

Promulgated:

July 19, 2022

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LAZARO-JAVIER, *J.*:

CONCURRENCE

I concur.

On November 14, 1960, Jorge Escalona and Hilaria Escalona (Spouses Escalona) got married. During their marriage, they acquired unregistered parcels of land identified as Lot Nos. 1 and 2 with a total area of 100,375 square meters. On June 16, 1998, Jorge waived his right over Lot No. 1 in favor of his illegitimate son Reygan Escalona (Reygan) without his wife Hilaria's consent. On July 28, 2005, Reygan relinquished his right over Lot No. 1 to Belinda Alexander (Belinda). Less than two (2) weeks later, or on August 8, 2005, Reygan also transferred Lot No. 2 to Belinda through a Deed of Renunciation and Quitclaim. On August 10, 2005, a Deed of Absolute Sale covering Lot Nos. 1 and 2 for ₱1,600,000.00 was executed between Reygan and Belinda.

On September 5, 2005, Spouses Escalona filed a complaint for annulment of documents with damages against Belinda and Reygan before the Regional Trial Court, docketed as Civil Case No. 342-0-2005. They claimed that Hilaria did not consent to Jorge's waiver of his rights over Lot No. 1. Too, the waiver was not meant to convey ownership to Reygan. As for Lot No. 2, Spouses Escalona never transferred the same to anyone. Reygan fraudulently sold the lot to Belinda who was a buyer in bad faith. She continued to transact with Reygan after Spouses Escalona already informed her on August 5, 2005, before the barangay, that Reygan had no authority to sell Lot Nos. 1 and 2.

Belinda sought to dismiss the case on the grounds of laches and prescription. She also countered that she was a buyer in good faith. Jorge's waiver of his rights in favor of Reygan was unconditional. She maintained that Reygan and Spouses Escalona conspired to commit fraud against her.

For his part, Reygan averred that he was already the owner of Lot No. 1 when he transferred the same to Belinda. But Belinda was in bad faith for inducing him to sell Lot Nos. 1 and 2 despite prior knowledge of the nature of his ownership thereof.

By Decision dated February 20, 2017, the Regional Trial Court dismissed the complaint for being time-barred. It held that Spouses Escalona had seven (7) years from June 16, 1998 (date of Jorge's waiver in favor of Reygan) within which to file the complaint but they filed the same only on September 5, 2005, or about three (3) months late.[1]

By Decision dated October 28, 2020, the Court of Appeals reversed. It held that an action or defense for declaration of nullity of contract does not prescribe. As for the nature of Belinda's participation in the transaction, she cannot be considered a buyer in good faith because there were circumstances which should have put her on guard. The Waiver and Quitclaim itself showed that Jorge was "married" but nowhere in the said document can his wife's consent be found. Under Article 124 of the Family Code, lack of written consent of one of the spouses to the disposition or encumbrance renders the transaction void.[2]

Belinda's motion for reconsideration was subsequently denied.[3]

The main issue here is whether the subject waiver of rights/alienation is void or merely voidable.

The prevailing law when Spouses Escalona got married was the Civil Code. It is undisputed that the property relation of Spouses Escalona is governed by the conjugal property of gains for lack of showing that they agreed on some other particular regime prior to the date of their marriage.[4]

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1 Id. at 2.
2 Id. at 4–6.
3 Id. at 5.
4 Family Code, Article 119. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains x x x shall govern the property relations between husband and wife."

Under Article 166 of the Civil Code, "*the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent x x x.*"[5] While Article 173 states that "*x x x [t]he wife may, during the marriage and* ***within ten years from the transaction*** *questioned, ask the courts for the annulment of any contract of the husband entered into without her consent x x x.*"[6] Thus, under the Civil Code, the sale of conjugal property without the consent of the wife is merely **voidable or valid until annulled**. And the wife has 10 years within which to assail the validity of the transaction.

Meanwhile, on August 3, 1988, the Family Code took effect and expressly repealed Title VI, Book I of the Civil Code on Property Relations Between Husband and Wife.[7] Chapter 4 of the Family Code on Conjugal Partnership of Gains was made applicable to conjugal partnership of gains already established before the effectivity of the Family Code, unless vested rights have been acquired under the Civil Code or other laws.[8]

Article 124[9] provides that in the absence of the consent of one spouse, any disposition of the conjugal properties by the other spouse is **void.** Corollary, Article 105 provides that the provisions on property relations under the Family Code apply to conjugal partnership of gains already established before its effectivity, **without prejudice to vested rights** already acquired in accordance with the Civil Code or other laws. This retroactive application of the Family Code is reiterated in Article 256.[10]

For the purpose of determining whether a retroactive application of the Family Code provisions is proper, a singular question comes to fore, *viz.*: Has the person against whom the retroactive application of the Family Code is sought acquired a vested right prior to its effectivity?

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5 Civil Code, Article 166.

6 Civil Code, Article 173.

7 *Muñoz, Jr. v. Ramirez and Carlos*, 643 Phil. 267 (2010) [Per *J.* Brion, Third Division].

8 See *Homeowners Savings & Loan Bank v. Dailo*, 493 Phil. 436, 443 (2005) [Per *J.* Tinga, Second Division].

9 Family Code, Article 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 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.

10 Family Code, Article 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.

This question is straightforward. The Court has defined a vested right as "some right or interest in the property which has become *fixed* and *established*, and is **no longer open to doubt or controversy**;" it is an "immediate *fixed right of present and future enjoyment*;" it is to be contradistinguished from a right that is "expectant or contingent." **The right must be absolute,** complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit.[11]

As to when the vested rights should have accrued, Article 105 provides:

> ARTICLE 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.

For these vested rights to be exempt from the retroactive application of the Family Code, the same should have **already been acquired prior to the effectivity of the Family Code** on August 3, 1988.[12] For instance, in *Tayag v. Court of Appeals*,[13] we found that a right of action filed under the regime of the Civil Code **and** prior to the effectivity of the Family Code constituted a vested right that should not be impaired by the retroactive application of the Family Code. Too, the failure of a petitioner to show any vested right in a property acquired prior to August 3, 1988 means that his or her situation is **not** exempt from the retroactive application of the Family Code.[14]

Here, Reygan and Belinda did not have any vested right to the conjugal property prior to the effectivity date of the Family Code. Neither was it shown that such vested right, if any, had inured to their benefit.[15]

As the *ponencia* keenly observes, the supposed conveyance of Lot No. 1 to Reygan only took place in 1998, more or less ten (10) years after the effectivity of the Family Code.[16] Hence, the provisions of the

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[11] *Heirs of Zari v. Santos*, 137 Phil. 79, 90 (1969) [Per *J.* Sanchez], citing *Benguet Consolidated Mining Co. v. Pineda*, 98 Phil. 711, 722 [Per *J.* Reyes, J.B.L.].

[12] See *Tayag v. Court of Appeals*, 285 Phil. 234, 245 (1992) [Per *J.* Regalado, Second Division]; *David v. Calilung*, G.R. No. 241036, January 26, 2021[Per *J.* Delos Santos, En Banc]; *Tumlos v. Sps. Fernandez*, 386 Phil. 936 (2000) [Per *J.* Panganiban, Third Division].

[13] Supra.

[14] *Spouses Aggabao v. Parulan, Jr.*, 644 Phil. 26, 36–37 (2010) [Per *J.* Bersamin, Third Division].

[15] Draft Decision, p. 17.

[16] Id.

Family Code should retroactively apply to this conveyance. More so because the retroactive application of the Family Code provisions to the conjugal partnership of gains is mandatory. Article 105 uses the word "shall" which denotes something imperative or operating to impose a duty.[17] No discretion is given, unless the retroactive application will operate to prejudice established vested rights.

Article 124 of the Family Code, therefore, governs the transfer of Lot No. 1 to Reygan,[18] *viz.*:

> Article 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 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.** (Emphases supplied)

It is undisputed that Jorge waived his right over Lot No. 1 in favor of Reygan without Hilaria's consent. Therefore, the conveyance of Lot No. 1 by Jorge to Reygan (and the subsequent transfer to Belinda) is **void.**

In *Spouses Aggabao v. Parulan*[19] which likewise involved a marriage celebrated under the Civil Code and an alienation of conjugal property after the effectivity of the Family Code, the Court categorically decreed that Article 124 of the Family Code ought to apply. There is no reason to depart from the disposition in that case. After all, like cases ought to be decided alike absent any powerful countervailing considerations.[20]

As for Lot No. 2, neither Jorge nor Hilaria alienated the same in favor of Reygan. Consequently, Reygan acquired no right whatsoever over Lot No. 2. Too, Reygan's purported relinquishment of his supposed right over Lot No. 2 in favor of Belinda is void. He certainly cannot relinquish a property which did not belong to him in the first place. *Nemo dat quod non habet.*

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17 See *Spouses Abella v. Spouses Abella*, 763 Phil. 372, 383 (2015) [Per *J.* Leonen, Second Division].
18 Draft Decision, pp. 15–16.
19 Supra note 15, at 36.
20 *Visayan Electric Company Employees Union [VECEU] v. Visayan Electric Company, Inc.*, (Notice) G.R. No. 234556, April 28, 2021.

Finally, I join the *ponencia* in holding that the 2021 case of ***Spouses Cueno v. Spouses Bautista***,[21] where the Court *En Banc* held that the sale of conjugal property without the consent of the wife is merely voidable, is not on all fours with the present case.

In ***Cueno***, the marriage of Spouses Cueno and the alienation of their conjugal property by the husband Eulalio both happened during the effectivity of the Civil Code, as opposed to the **present case** where Spouses Escalona got married during the effectivity of the Civil Code but the alienation of the conjugal property happened after the Family Code already took effect.

More important, ***Cueno*** ordained the voidability of the sale only in the context of the apparent conflicting rulings of the Court on the nature of the husband's alienation of the conjugal property without the consent of the wife under the regime of the Civil Code, *i.e.*, voidable or void. In fact, ***Cueno*** laid down that unlike in Article 96 and 124 of the Family Code which **unequivocally state** that a disposition of community or conjugal property without the consent of the other spouse is **void**, there appears to be an ongoing conflict of characterization as regards the status of alienations or encumbrances that fail to comply with Article 166 of the Civil Code. The **first view** treats such contracts as **void** (1) on the basis of lack of consent of an indispensable party and/or (2) because such transactions contravene mandatory provisions of law. On the other hand, the **second view** holds that although Article 166 requires the consent of the wife, the absence of such consent does not render the entire transaction void but **merely voidable** in accordance with Article 173 of the Civil Code."

In ruling that the sale is merely voidable, the Court held:

> Evidently, the remedies and limitations provided under Article 173 in transactions covered by Article 166 are *completely inconsistent with the nature of void contracts*, which are subject to collateral attacks by interested parties, do not prescribe and have no force and effect. Categorizing dispositions and encumbrances under Article 166 as void and thus imprescriptible would not only nullify Article 173 of the Civil Code but also render the limitations provided therein inutile.
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> At this juncture, the Court finds it proper to correct its ruling in *Bucoy* that contracts disposing of conjugal property without the wife's consent are "void for lack of consent of an indispensable party under Article 166." This is not accurate.

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[21] G.R. No. 246445, March 2, 2021 [Per *J.* Caguioa, En Banc].

> It is not a matter of "lack of consent," which gives rise to a "no contract" situation under Article 1318 of the Civil Code. Neither can the contract be considered "void" because it does not fall under any of those expressly mentioned in Article 1409 of the Civil Code. **Rather, Article 166 demonstrates that the husband has no legal capacity to alienate or encumber conjugal real property without his wife's consent. This is *akin* to an incapacity to give consent under Article 1390 of the Civil Code, which renders the contract merely voidable** x x x. (Emphasis supplied; citations omitted)

Notably, ***Cueno*** made no definite ruling that Article 173 of the Civil Code applies even to alienation of conjugal property after the Family Code took effect, as long as the spouses were married during the effectivity of the Civil Code. Neither can this be implied from ***Cueno's*** discussion of the issues. Hence, ***Cueno*** finds no application in the present case.

AMY C. LAZARO-JAVIER
Associate Justice

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