

**ROBERTO LAPERAL, JR. AND PURIFICACION M. LAPERAL,
PLAINTIFFS AND APPELLANTS, VS. RAMON L. KATIGBAK AND
EVELINA K. KATIGBAK, DEFENDANTS AND APPELLEES.**

G.R. No. L-4299. January 31, 1952

Ponente: BENGZON, J.

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BENGZON, J.:

In the court of first instance of Manila, the plaintiffs, Roberto Laperal Jr. and his wife Purificacion M. Laperal sued Ramon L. Katigbak and his wife Evelina. K. Katigbak to recover the total sum of one hundred thirteen thousand and five hundred pesos (P113,500) plus interest and costs.

The defendant Evelina moved to dismiss, on the ground that the complaint failed to state sufficient facts to constitute a cause of action against her. The plaintiff opposed the motion; but the court, Judge Emilio Peña presiding, rendered judgment dismissing the complaint. Hence this appeal.

Two causes of action were set forth in the complaint. The first transcribed four promissory notes for various sums, signed on different dates of March, April and May of the year 1950, by Ramon Katigbak in favor of Roberto Laperal Jr. The total amount is P14,000. The notes are not signed by Evelina. The only allegations that may affect her liability if any, are that Ramon signed the notes for value received "while married to her", and that both defendants refused to pay the notes.

It is obvious that for the aforesaid notes the defendant Evelina is not personally liable. Ramon was not her agent, and he did not contract for her.

The husband cannot by his contract bind the paraphernal property unless its administration has been transferred to him, which is not the case. Neither can the paraphernal property be made to answer for debts incurred by the husband.[1]

For the repayment of the sums borrowed by him, Ramon Katigbak was personally responsible with his own private funds, and at most the assets of the conjugal partnership. To reach both kinds of property it is unnecessary for plaintiffs to implead the wife Evelina K. Katigbak. "Where the husband is alone liable, no action lies against the wife, and she is not a necessary party defendant.[2]"

Of course there are in the Civil Code[3] provisions that although the fruits of the paraphernal property form part of the assets of the conjugal partnership, they may not be subjected to the payment of personal obligations of the husband, unless it be proved that such obligations redounded to the benefit of the family.[4] Perhaps in view of these provisions the plaintiffs have included Evelina to give her a chance to defend her interests. But plaintiffs having made no allegation about benefits to the family we fail to see the necessity or justice of bothering said defendant.

Under the second cause of action the complaint averred that "the defendant Ramon L. Katigbak while married to the defendant Evelina K. Katigbak received from the plaintiffs eleven pieces of jewelry valued at P97,500

belonging to plaintiffs for sale on commission basis with the understanding that he either should pay its value or return whatever pieces of jewelry remain unsold within fifteen (15) days from his receipt thereof," and that notwithstanding the lapse of the fifteen-day period the defendants refused to return the jewels or to pay their value.

As the receipts for the jewelry are signed by Ramon L. Katigbak what has been stated concerning the first cause of action applies equally to this.

It is true that the plaintiffs allege that both "defendants acted as their agents" in the sale on commission of the jewels; but having attached the receipts as integral parts of the complaint, their allegation as to agency in so far as Evelina is concerned, should be deemed as a mere legal inference from the marital relation;—not a factual assertion based on specific contract. The legal conclusion is not supported by any statute. The provisions of the New Civil Code which plaintiffs invoke on the matter are not applicable, the transactions having taken place before June 1950.

Wherefore the appealed decision will be affirmed, with costs against appellants.

Pablo, Padilla, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.

[1] Alvaran vs. Marquez, 11 Phil. 263; Vargas vs. Egamino, 12 Phil. 56; Veloso vs. Martinez, 28 Phil. 255.

[2] 41 C. J. S. p. 907.

[3] The New Civil Code does not apply because the transactions occurred before June, 1950.

[4] Arts. 1385, 1886.

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