

**LUZ HERMOSA, AS ADMINISTRATRIX OF THE INTESTATE ESTATE OF
FERNANDO HERMOSA, SR., AND FERNANDO HERMOSA, JR.,
PETITIONERS, VS. EPIFANIO M. LONGARA, RESPONDENT.**

G.R. No. L-5267. October 27, 1953

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal by way of certiorari against a decision of the Court of Appeals, fourth division, approving certain claims presented by Epifanio M. Longara against the intestate estate of Fernando Hermosa, Sr. The claims are of three kinds, namely, P2,341.41 representing credit advances made to the intestate from 1932 to 1944, P12,924.12 made to his son Francisco Hermosa, and P3,772 made to his grandson, Fernando Hermosa, Jr. from 1945 to 1947, after the death of the intestate, which occurred in December, 1944. The claimant presented evidence and the Court of Appeals found, in accordance therewith, that the intestate had asked for the said credit advances for himself and for the members of his family "on condition that their payment should be made by Fernando Hermosa Sr. as soon as he receive funds derived from the sale of his property in Spain. Claimant had testified without opposition that the credit advances were to be "payable as soon as Fernando Hermosa, Sr.'s property in Spain was sold and he received money derived from the sale." The Court of Appeals held that the advances did not become due until the administratrix received the sum of P20,000 from the buyer of the property. Upon authorization of the probate court in October, 1947, the administratrix sold the property in November, 1947, and the same was paid for subsequently. The claim was filed on October 2, 1948.

It is contended on this appeal that the obligation contracted by the intestate was subject to a condition exclusively dependent upon the will of the debtor (a *condicion potestativa*) and therefore null and void, in accordance with Article 1115 of the old Civil Code. The case of *Osmeña vs. Rama*, (14 Phil. 99) is cited to support appellants contention. In this case, this court seems to have filed that a promise to pay an indebtedness "if a house of strong materials is sold" is an obligation the performance of which depended on the will of the debtor. We have examined this case and we find that the supposed ruling was merely an assumptions and the same was not the actual ruling of the case.

A careful consideration of the condition upon which the payment of the sums advanced was made to depend, i. e., "as soon as he (intestate) receive funds derived from the sale of his property in Spain," discloses the fact that the condition in question does not depend exclusively upon the will of the debtor, but also upon other circumstances beyond his power or control. If the condition were "if he decides to sell his house," or "if he likes to pay the sums advanced," or any other condition of similar import implying that upon him (the debtor) alone payment would depend, the condition would be *potestativa*, dependent exclusively upon his will or discretion. In the form that the condition was found by the Court of Appeals, however, the condition implies that the intestate had already decided to sell his house, or at least that he had made his creditors believe that he had done so, and that all that was needed to make his obligation (to pay his indebtedness) demand- able is that the sale be consummated and the price thereof remitted to the islands. Note that if the intestate would prevent or would have prevented the

consummation of the sale voluntarily, the condition would be or would have been deemed or considered complied with (Article 1119, old Civil Code). The will to sell on the part of the intestate was, therefore, present in fact, or presumed legally to exist, although the price and other conditions thereof were still within his discretion and final approval. But in addition to this acceptability of the price and other conditions of the sale to him (the intestate-vendor), there were still other conditions that had to occur to effect the sale, mainly that of the presence of a buyer, ready, able and willing to purchase the property under the conditions demanded by the intestate. Without such a buyer the sale could not be carried out or the proceeds thereof sent to the islands. It is evident, therefore, that the condition of the obligation was not a purely potestative one, depending exclusively upon the will of the intestate, but a mixed one, depending partly upon the will of the intestate and partly upon chance, i. e., the presence of a buyer of the property for the price and under the conditions the intestate. The obligation is clearly governed by the second sentence of Article 1115 of the old Civil Code (8 Manresa 126). The condition is, besides, a suspensive condition, upon the happening of which the obligation to pay is made dependent. And upon the happening of the condition, the debt became immediately due and demandable. (Article 1114, old Civil Code; 8 Manresa 119.)

One other point needs to be considered, and this is the fact that the sale was not effected in the lifetime of the debtor (the intestate), but after his death and by his administrator, the very wife of the claimant. On this last circumstance we must bear in mind that the Court of Appeals found no evidence to show that the claim was the product of a collusion or connivance between the administratrix and the claimant. That there was really a promise made by the intestate to pay for the credit advances may be implied from the fact that the receipts thereof had been preserved. Regularity of the advances and the close relationship between the intestate and the claimant also support this conclusion.

As to the fact that the suspensive condition took place after the death of the debtor, and that advances were made more than ten years before the sale, we are supported in our conclusion that the same is immaterial by Sanchez Roman, who says, among other things, as to conditional obligations:

1.^a La obligacion contractual afectada por condicion suspensiva, no es exigible hasta que se cumpla la condicion, * * *.

2.^a El cumplimiento de la condicion suspensiva retrotrae los efectos del acto juridico originario de la obligacion a que aquella afecta, al tiempo de la celebracion de este; * * *.

3.^a La referida retroaccion, no solo tiene lugar cuando el cumplimiento de la condicion se verifica en vida de los contrayentes, si que tambien se produce cuando aquel se realiza despues de la muerte de estos. (4 Sanchez Roman, p. 122) (*Italics supplied.*)

As the obligation retroacts to the date when the contract was entered into, all amounts advanced from the time of the agreement became due, upon the happening of the suspensive condition. As the obligation to pay became due and demandable only when the house was sold and the proceeds received in the islands, the action to recover the same only accrued, within the meaning of the statute of limitations, on the date the money became available here, hence the action to recover the advances has not yet prescribed.

The above considerations dispose of the most important question raised on this appeal. It is also contended that the third group of claims, i. e., credits furnished the intestate's grandson after his (intestate's) death in 1944, should not have been allowed. We find merit in this contention. Even if authorization to furnish necessities to his grandson may have been given, this authorization could not be made to extend after his death, for two obvious reasons. First because the obligation to furnish support is personal and is extinguished upon the death of the person obliged to give support (article 150, old Civil Code), and second because upon the death of a principal (the

intestate in this case), his agent's authority or authorization is deemed terminated (article 1732, old Civil Code). The part of the decision allowing this group of claims, amounting to P3,772, should be reversed.

One last contention of the appellant is that the claims are barred by the statute of non-claims. It does not appear from the record that this question was ever raised in any of the courts below. We are, therefore, without authority under our rules to consider this issue at this stage of the proceedings.

The judgment appealed from is hereby affirmed in so far as it approves the claims of appellee in the amounts of P2,341 and P12,942.12, and reversed as to that of P3,772. Without costs.

Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

CONCURRING AND DISSENTING

PARAS, C.J.:

I concur in the majority decision insofar as it reverses the appealed judgment allowing the claim for P3,772, but dissent therefrom insofar as it affirms the appealed judgment approving appellee's other claims.

The principal question is whether the stipulation to pay the advances "on condition that their payment should be made by Fernando Hermosa, Sr. as soon as he receives funds derived from the sale of his property in Spain", and making said advances "payable as soon as Fernando Hermosa, Sr.'s property in Spain was sold and he received money derived from the sale," is a *condicion potestiva* and therefore null and void in accordance with article 1115 of the old Civil Code. My answer is in the affirmative, because it is very obvious that the matter of the sale of the house rested on the sole will of the debtor, unaffected by any outside consideration or influence. The majority admit that if the condition were "if he decides to sell his house" or "if he likes to pay the sums advanced," the same would be *potestive*. I think a mere play of words is invoked, as I cannot see any substantial difference. Under the condition imposed by Fernando Hermosa, Sr., it is immaterial whether or not he had already decided to sell his house, since there is no pretence that acceptable conditions of the sale had been made the subject of an agreement, such that if such conditions presented themselves the debtor would be bound to proceed with the sale. In the case at bar, the terms are still subject to the sole judgment—if not whims and caprice—of Fernando Hermosa, Sr. In fact no sale was effected during his lifetime.

As the condition above referred to is null and void, the debt resulting from the advances made to Fernando Hermosa, Sr. became either immediately demandable or payable within a term to be fixed by the court. In both cases the action has prescribed after the lapse of ten years. In the case of *Gonzales vs. De Jose* (66 Phil., 369, 371), this court already held as follows:

"We hold that the two promissory notes are governed by article 1128 because under the terms thereof the plaintiff intended to grant the defendant a period within which to pay his debts. As the promissory notes do not fix this period, it is for the court to fix the same. (Citing cases.) The action to ask the court to fix the period has already prescribed in accordance with section 43 (1) of the code of Civil Procedure. This period of prescription is ten years, which has already elapsed from the execution of the promissory notes until the filing of the action on June 1, 1934. The action which should be brought in accordance with article 1128 is different from the action for the recovery of the amount of the notes, although the effects of both are the same, being, like other civil actions, subject to the rules of prescription."

The majority also contend that the condition in question depended on other factors than the sole will of the debtor,

and cite the presence of a buyer, ready, able and willing to purchase the property. This is of no moment, because, as already stated, in the absence of any contract setting forth the minimum or maximum terms which should be acceptable to the debtor, nobody could legally compel Fernando Hermosa, Sr. to make any sale.

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