

ROSARIO L. DE BRAGANZA, ET AL., PETITIONERS, VS. FERNANDO F. DE VILLA ABRILLE, RESPONDENT.

G.R. No. L-12471. April 13, 1959

Ponente: BENGZON, J.

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BENGZON, J.:

Rosario L. de Braganza and her sons Rodolfo and Guillermo petition for review of the Court of Appeals' decision whereby they were required solidarily to pay Fernando F. de Villa Abrille the sum of P10,000 plus 2% interest from October 30, 1944.

The above petitioners, it appears, received from Villa Abrille, as a loan, on October 30, 1944 P70,000 in Japanese war notes and in consideration thereof, promised in writing (Exhibit A) to pay him P10,000 "in legal currency of the P. I. two years after the cessation of the present hostilities or as soon as International Exchange has been established in the Philippines", plus 2% per annum. Because payment had not been made, Villa Abrille sued them in March 1949.

In their answer before the Manila court of first Instance, defendants claimed to have received P40,000 only—instead of P70,000 as plaintiff asserted. They also averred that Guillermo and Rodolfo were minors when they signed the promissory note Exhibit A. After hearing the parties and their evidence, said court rendered judgment, which the appellate court affirmed, in the terms above described. There can be no question about the responsibility of Mrs. Rosario L. Braganza because the minority of her consigners does not release her from liability; since it is a personal defense of the minors. However, such defense will benefit her to the extent of the shares for which such minors may be responsible. (Art. 1148, Civil Code). It is not denied that at the time of signing Exhibit A, Guillermo and Rodolfo Braganza were minors—16 and 18 respectively. However, the Court of Appeals found them liable pursuant to the following reasoning:

"* * * These two appellants did not make it appear in the promissory note that they were not yet of legal age. If they were really fair to their creditor, they should have apprised him on their incapacity, and if the former, in spite of the information relative to their age, parted with his money, then, he should be contended with the consequence of his act. But, that was not the case. Perhaps defendants in their desire to acquire much needed money, they readily and willingly signed the promissory note, without disclosing the legal impediment with respect to Guillermo and Rodolfo. When minors, like in the instant case, pretended to be of legal age, when in fact they were not, they will not later on be permitted to excuse themselves from the fulfillment of the obligation contracted by them or to have it annulled." (Mercado, et al. vs. Espiritu, 37 Phil., 215.) [Italics Ours.]

We cannot agree to the above conclusions. From the minors' failure to disclose their minority in the same promissory note they signed, it does not follow as a legal proposition, that they will not be permitted thereafter to assert it. They had no juridical duty to disclose their inability. In fact, according to Corpus Juris Secundum, 43 p. 206;

"* * *. Some authorities consider that a false representation as to age inducing a contract is a part of the

contract and accordingly hold that it cannot be the basis of an action in tort. Other authorities hold that such misrepresentation may be the basis of such an action, on the theory that such misrepresentation is not a part of, and does not grow out of, the contract, or that the enforcement of liability for such misrepresentation as a tort does not constitute an indirect method of enforcing liability on the contract. In order to hold the infant liable, however, the fraud must be actual and not constructive. It has been held that his mere silence when making a contract as to his age does not constitute a fraud which can be made the basis of an action of deceit." (*Italics Ours.*)

"The fraud of which an infant may be held liable to one who contracts with him in the belief that he is of full age must be actual not constructive, and mere failure of the infant to disclose his age is not sufficient." (27 *American Jurisprudence*, p. 819.)

The Mercado case^[1] cited in the decision under review is different because the document signed therein by the minor specifically stated he was of age; here Exhibit A contained no such statement. In other words, in the Mercado case, the minor was guilty of active misrepresentation; whereas in this case, if the minors were guilty at all, which we doubt it is of passive (or constructive) misrepresentation, indeed, there is a growing sentiment in favor of limiting the scope of the application of the Mercado ruling, what with the consideration that the very minority which incapacitated minors from contracting should like- wise exempt them from the results of misrepresentation.

We hold, on this point, that being minors, Rodolfo and Guillermo Braganza could not be legally bound by their signatures in Exhibit A.

It is argued, nevertheless, by respondent that inasmuch as this defense was interposed only in 1951, and inasmuch as Rodolfo reached the age of majority in 1947, it was too late to invoke it because more than 4 years had elapsed after he had become emancipated upon reaching the age of majority. The provisions of Article 1301 of the Civil Code are -quoted to the effect that "an action to annul a contract by reason of minority must be filed within 4 years" after the minor has reached majority age. The parties do not specify the exact date of Rodolfo's birth. It is undenied, however, that in October 1944, he was 18 years old. On the basis of such datum, it should be held that in October 1947, he was 21 years old, and in October 1951, he was 25 years old. So that when this defense was interposed in June 1951, four years had not yet completely elapsed from October 1947.

Furthermore, there is reason to doubt the pertinency of the 4-year period fixed by Article 1301 of the Civil Code where minority is set up only as a defense to an action, without the minors asking for any positive relief from the contract. For one thing, they have not filed in this case an action for annulment.^[2] They merely interposed an excuse from liability.

Upon the other hand, these minors may not be entirely absolved from monetary responsibility. In accordance with the provisions of the Civil Code, even if their written contract is unenforceable because of non-age, they shall make restitution to the extent that they may have profited by the money they received. (Art. 1340) There is testimony that the funds delivered to them by Villa Abrille were used for their support during the Japanese occupation. Such being the case, it is but fair to hold that they had profited to the extent of the value of such money, which value has been authoritatively established in the so-called Ballantine Schedule: in October 1944, P40.00 Japanese notes were equivalent to P1 of current Philippine money. Wherefore, as the share of these minors was 2/3 of P70,000 or P46,666.66, they should now return P1,166.67.^[3] Their promise to pay P10,000 in Philippine currency, (Exhibit A) can not be enforced, as already stated, since they were minors incapable of binding themselves. Their liability, to repeat, is presently declared without regard of said Exhibit A, but solely in pursuance of Article 1304 of the Civil Code.

Accordingly, the appealed decision should be modified in the sense that Rosario Braganza shall pay 1/3 of

P10,000 i.e., P3,333.33[4] plus 2% interest from October 1944; and Rodolfo and Guillermo Braganza shall pay jointly[5] to the same creditor the total amount of P1,166.67 plus 6% interest beginning March 7, 1949, when the complaint was filed. No costs in this instance.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion and Endencia, JJ., concur.

[1] Mercado vs. Espiritu, 37 Phil., 215.

[2] It would be observed in this connection, that the New Civil Code does not govern the contract executed in 1944.

[3] P46,666.00 divided by 40.

[4] She says peso for peso, in view of the terms of Exhibit A. She is, indeed, willing to pay as much.

[5] Arts. 1137, 1138, Civil Code. Debtors presumed to be bound jointly—not severally. Un Pak Leung vs. Negora, 9 Phil., 381; Flaviano vs. Delgado, 11 Phil., 154; Compania General vs. Obed, 13 Phil., 391.

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