

**FAUSTINO CRUZ, PLAINTIFF-APPELLANT, VS. J. M. TUASON &
COMPANY, INC., AND GREGORIO ARANETA, INC.,
DEFENDANTS-APPELLEES.**

G.R. No. L-23749. April 29, 1977

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the order dated August 13, 1964 of the Court of First Instance of Quezon City in Civil Case No. Q-7751, Faustino Cruz vs. J. M. Tuason & Co., Inc., and Gregorio Araneta, Inc., dismissing the complaint of appellant Cruz for the recovery of improvements he has made on appellees' land and to compel appellees to convey to him 3,000 square meters of land on three grounds: (1) failure of the complaint to state a cause of action; (2) the cause of action of plaintiff is unenforceable under the Statute of Frauds; and (3) the action of the plaintiff has already prescribed.

Actually, a perusal of plaintiff-appellant's complaint below shows that he alleged two separate causes of action, namely: (1) that upon request of the Deudors (the family of Telesforo Deudor who laid claim on the land in question on the strength of an "information posesoria") plaintiff made permanent improvements valued at P30,400.00 on said land having an area of more or less 20 quiñones and for which he also incurred expenses in the amount of P7,781.74, and since defendants-appellees are being benefited by said improvements, he is entitled to reimbursement from them of said amounts; and (2) that in 1952, defendants availed of plaintiff's services as an intermediary with the Deudors to work for the amicable settlement of Civil Case No. Q-135, then pending also in the Court of First Instance of Quezon City, and involving 50 quiñones of land, of which the 20 quiñones aforementioned form part, and notwithstanding his having performed his services, as in fact, a compromise agreement entered into on March 16, 1963 between the Deudors and the defendants was approved by the court, the latter have refused to convey to him the 3,000 square meters of land occupied by him, (a part of the 20 quiñones above) which said defendants had promised to do "within ten years from and after date of signing of the compromise agreement", as consideration for his services.

Within the period allowed by the rules, the defendants filed separate motions to dismiss alleging three identical grounds: (1) As regards the improvements made by plaintiff, that the complaint states no cause of action, the agreement regarding the same having been made by plaintiff with the Deudors and not with the defendants, hence the theory of plaintiff based on Article 2142 of the Civil Code on unjust enrichment is untenable; and (2) anent the alleged agreement about plaintiff's services as intermediary in consideration of which, defendants promised to convey to him 3,000 square meters of land, that the same is unenforceable under the Statute of Frauds, there being nothing in writing about it, and, in any event, (3) that the action of plaintiff to compel such conveyance has already prescribed.

Plaintiff opposed the motion insisting that Article 2142 of the Civil Code is applicable to his case; that the Statute of Frauds cannot be invoked by defendants, not only because Article 1403 of the Civil Code refers only to "sale of

real property or of an interest therein" and not to promises to convey real property like the one supposedly promised by defendants to him, but also because, he, the plaintiff has already performed his part of the agreement, hence the agreement has already been partly executed and not merely executory within the contemplation of the Statute; and that his action has not prescribed for the reason that defendants had ten years to comply and only after the said ten years did his cause of action accrue, that is, ten years after March 16, 1963, the date of the approval of the compromise agreement, and his complaint was filed on January 24, 1964.

Ruling on the motion to dismiss, the trial court issued the herein impugned order of August 13, 1964:

"In the motion, dated January 31, 1964, defendant Gregorio Araneta, Inc. prayed that the complaint against it be dismissed on the ground that (1) the claim on which the action is founded is unenforceable under the provision of the Statute of Frauds; and (2) the plaintiff's action, if any has already prescribed. In the other motion of February 11, 1964, defendant J. M. Tuason Co., Inc. sought the dismissal of the plaintiff's complaint on the ground that it states no cause of action and on the identical grounds stated in the motion to dismiss of defendant Gregorio Araneta, Inc. The said motions are duly opposed by the plaintiff.

"From the allegations of the complaint, it appears that, by virtue of an agreement arrived at in 1948 by the plaintiff and the Deudors, the former assisted the latter in clearing, improving, subdividing and selling the large tract of land consisting of 50 quiñones covered by the informacion posesoria in the name of the late Telesforo Deudor and incurred expenses, which are valued approximately at P38,400.00 and P7,781.74, respectively; and, for the reasons that said improvements are being used and enjoyed by the defendants, the plaintiff is seeking the reimbursement for the services and expenses stated above from the defendants.

"Defendant J. M. Tuason & Co., Inc. claimed that, insofar as the plaintiff's claim for the reimbursement of the amounts of P38,400.00 and P7,781.74 is concerned, it is not a privity to the plaintiff's agreement to assist the Deudors in improving the 50 quinones. On the other hand, the plaintiff countered that, by holding and utilizing the improvements introduced by him, the defendants are unjustly enriching and benefiting at the expense of the plaintiff; and that said improvements constitute a lien or charge on the property itself.

"On the issue that the complaint insofar as it claims the reimbursement for the services rendered and expenses incurred by the plaintiff, states no cause of action, the Court is of the opinion that the same is well-founded. It is found that the defendants are not parties to the supposed express contract entered into by and between the plaintiff and the Deudors for the clearing and improvement of the 50 quiñones. Furthermore in order that the alleged improvement may be considered a lien or charge on the property, the same should have been made in good faith and under the mistake as to the title. The Court can take judicial notice of the fact that the tract of land supposedly improved by the plaintiff had been registered way back in 1914 in the name of the predecessors-in-interest of defendant J. M. Tuason & Co., Inc. This fact is confirmed in the decision rendered by the Supreme Court on July 31, 1956 in case G. R. No. L-5079 entitled 'J. M. Tuason & Co., Inc. vs. Geronimo Santiago, et al'. Such being the case, the plaintiff cannot claim good faith and mistake as to the title of the land.

"On the issue of statute of fraud, the Court believes that same is applicable to the instant case. The allegation in par. 12 of the complaint states that the defendants promised and agreed to cede, transfer and convey unto the plaintiff the 3,000 square meters of land in consideration of certain services to be rendered then. It is clear that the alleged agreement involves an interest in real property. Under the provisions of Sec. 2(e) of Article 1403 of the Civil Code, such agreement is not enforceable as it is not in writing and sub-scribed by the party charged.

"On the issue of statute of limitations, the Court holds that the plaintiff's action has prescribed. It is alleged in par. 11 of the complaint that, sometime in 1952, the defendants approached the plaintiff to prevail upon the Deudors to enter into a compromise agreement in Civil Case No. Q-135 and allied cases. Furthermore, pars. 13 and 14 of the complaint alleged that the plaintiff acted as emissary of both parties in conveying their respective proposals and counter-proposals until the final settlement was effected on March 16, 1953 and approved by the

Court on April 11, 1953. In the present action, which was instituted on January 24, 1964, the plaintiff is seeking to enforce the supposed agreement entered into between him and the defendants in 1952, which has already prescribed.

"WHEREFORE, the plaintiff's complaint is hereby ordered DISMISSED without pronouncement as to costs.

"SO ORDERED." (Pp. 65-69, Rec. on Appeal.)

On August 22, 1964, plaintiff's counsel filed a motion for reconsideration dated August 20, 1964 as follows:

"Plaintiff through undersigned counsel and to this Honorable Court, respectfully moves to reconsider its Order bearing date of 13 August 1964, on the following grounds:

"I. THAT THE COMPLAINT STATES A SUFFICIENT CAUSE OF ACTION AGAINST DEFENDANTS IN SO FAR AS PLAINTIFF'S CLAIM PAYMENT OF SERVICES AND REIMBURSEMENT OF HIS EXPENSES, IS CONCERNED;

"II. THAT REGARDING PLAINTIFF'S CLAIM OVER THE 3,000 SQ. MS., THE SAME HAS NOT PRESCRIBED AND THE STATUTE OF FRAUDS IS NOT APPLICABLE THERETO;

"A R G U M E N T

"Plaintiff's complaint contains two (2) causes of action — the first being an action for sum of money in the amount of P7,781.74 representing actual expenses and P38,400.00 as reasonable compensation for services in improving the 50 quiñones now in the possession of defendants. The second cause of action deals with the 3,000 sq. ms. which defendants have agreed to transfer unto plaintiff for services rendered in effecting the compromise between the Deudors and defendants;

"Under its order of August 13, 1964, this Honorable Court dismissed the claim for sum of money on the ground that the complaint does not state a cause of action against defendants. We respectfully submit:

"I. THAT THE COMPLAINT STATES A SUFFICIENT CAUSE OF ACTION AGAINST DEFENDANTS IN SO FAR AS PLAINTIFF'S CLAIM FOR PAYMENT OF SERVICES AND REIMBURSEMENT OF HIS EXPENSES, IS CONCERNED.

"Said this Honorable Court (at p. 2, Order):

"O R D E R

xx xx xx

"On the issue that the complaint, in so far as it claims the reimbursement for the services rendered and expenses incurred by the plaintiff, states no cause of action, the Court is of the opinion that the same is well-founded. It is found that the defendants are not parties to the supposed express contract entered into by and between the plaintiff and the Deudors for the clearing and improvement of the 50 quiñones. Furthermore, in order that the alleged improvement may be considered a lien or charge on the property, the same should have been made in good faith and under the mistake as to title. The Court can take judicial notice of the fact that the tract of land supposedly improved by the plaintiff had been registered way back in 1914 in the name of the predecessors-in-interest of defendant J. M. Tuason & Co., Inc. This fact is confirmed in the decision rendered by the Supreme Court on July 31, 1956 in case G. R. No. L-5079 entitled 'J. M. Tuason & Co., Inc. vs. Geronimo Santiago, et al. ' Such being the case, the plaintiff cannot claim good faith and mistake as to the title of the land.'

"The position of this Honorable Court (supra) is that the complaint does not state a cause of action in so far as

the claim for services and expenses is concerned because the contract for the improvement of the properties was solely between the Deudors and plaintiff, and defendants are not privies to it. Now, plaintiff's theory is that defendants are nonetheless liable since they are utilizing and enjoying the benefits of said improvements. Thus, under paragraph 16 of the complaint, it is alleged:

'(16) That the services and personal expenses of plaintiff mentioned in paragraph 7 hereof were rendered and in fact paid by him to improve, as they in fact resulted in considerable improvement of the 50 quiñones, and defendants being now in possession of and utilizing said improvements should reimburse and pay plaintiff for such services and expenses.

"Plaintiff's cause of action is premised inter alia, on the theory of unjust enrichment under Article 2142 of the Civil Code:

'ART. 2142. Certain lawful voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.'

"In like vein, Article 19 of the same Code enjoins that:

'ART. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.'

"We respectfully draw the attention of this Honorable Court to the fact that ARTICLE 2142 (SUPRA) DEALS WITH QUASI-CONTRACTS or situations WHERE THERE IS NO CONTRACT BETWEEN THE PARTIES TO THE ACTION. Further, as we can readily see from the title thereof (Title XVII), that the same bears the designation 'EXTRA CONTRACTUAL OBLIGATIONS' or obligations which do not arise from contracts. While it is true that there was no agreement between plaintiff and defendants herein for the improvement of the 50 quiñones, since the latter are presently enjoying and utilizing the benefits brought about through plaintiff's labor and expenses, defendants should pay and reimburse him therefor under the principle that 'no one may enrich himself at the expense of another, ' In this posture, the complaint states a cause of action against the defendants.

"II. THAT REGARDING PLAINTIFF'S CLAIM OVER THE 3,000 SQ. MS. THE SAME HAS NOT PRESCRIBED AND THE STATUTE OF FRAUDS IS NOT APPLICABLE THERETO.

"The Statute of Frauds

is CLEARLY inapplicable

to this case:

"At page 2 of this Honorable Court's order dated 13 August 1964, the Court ruled as follows:

"O R D E R

xx xx xx

'On the issue of statute of fraud, the Court believes that same is applicable to the instant case. The allegation in par. 12 of the complaint states that the defendants promised and agree to cede, transfer and convey unto the plaintiff, 3, 000 square meters of land in consideration of certain services to be rendered then. It is clear that the alleged agreement involves an interest in real property. Under the provisions of Sec. 2(e) of Article 1403 of the Civil Code, such agreement is not enforceable as it is not in writing and subscribed by the party charged. '

"To bring this issue in sharper focus, we shall reproduce not only paragraph 12 of the complaint but also the other pertinent paragraphs therein contained. Paragraph 12 states thus:

"COMPLAINT

xx xx xx

'12). That plaintiff conferred with the aforesaid representatives of defendants several times and on these occasions, the latter promised and agreed to cede, transfer and convey unto plaintiff the 3, 000 sq. ms. (now known as Lots 16-B , 17 and 18) which plaintiff was then occupying and continues to occupy as of this writing, for and in consideration of the following conditions:

(a) That plaintiff succeed in convincing the DEUDORS to enter into a compromise agreement and that such agreement be actually entered into by and between the DEUDORS and defendant companies;

(b) That as of date of signing the compromise agreement, plaintiff shall be the owner of the 3, 000 sq. ms. but the documents evidencing his title over this property shall be executed and delivered by defendants to plaintiff within ten (10) years from and after date of signing of the compromise agreement;

(c) That plaintiff shall, without any monetary expense on his part, assist in clearing the 20 quiñones of its occupants;

'13). That in order to effect a compromise between the parties, plaintiff not only as well acted as emissary of both parties in conveying their respective proposals and counter-proposals until plaintiff finally succeeded in convincing the DEUDORS to settle with defendants amicably. Thus, on March 16, 1953, a Compromise Agreement was entered into by and between the DEUDORS and the defendant companies; and on April 11, 1953, this agreement was approved by this Honorable Court;

'14). That in order to comply with his other obligations under his agreement with defendant companies, plaintiff had to confer with the occupants of the property, exposing himself to physical harm, convincing said occupants to leave the premises and to refrain from resorting to physical violence in resisting defendants' demands to vacate;

'That plaintiff further assisted defendants' employees in the actual demolition and transfer of all the houses within the perimeter of the 20 quiñones until the end of 1955, when said area was totally cleared and the houses transferred to another area designated by the defendants as 'Capt. Cruz Block' in Masambong, Quezon City. ' (Pars. 12, 13 and 14, Complaint; Italics Ours).

"From the foregoing, it is clear then that the agreement between the parties mentioned in paragraph 12 (supra) of the complaint has already been fully EXECUTED ON ONE PART, namely by the plaintiff. Regarding the applicability of the statute of frauds (Art. 1403, Civil Code), it has been uniformly held that the statute of frauds IS APPLICABLE ONLY TO EXECUTORY CON-TRACTS BUT NOT WHERE THE CONTRACT HAS BEEN PARTLY EXECUTED:

'SAME ACTION TO ENFORCE. - The statute of frauds has been uniformly interpreted to be applicable to executory and not to completed or executed contracts. Performance of the contract takes it out of the operation of the statute. xx xx.

The statute of frauds is not applicable to contracts which are either totally or partially performed, on the theory that there is a wide field for the commission of frauds in executory contracts which can only be prevented by requiring them to be in writing, a fact which is reduced to a minimum in executed contracts because the intention of the parties becomes apparent by their exe-cution and execution, in most cases, concludes the right of the parties. x x x. The partial performance may be proved by either documentary or oral evidence. (at pp. 564-565, Tolentino's Civil Code of the Philippines, Vol. IV, 1962 Ed.; Italics Ours).

"Authorities in support of the foregoing rule are legion. Thus, Mr. Justice Moran in his 'Com-ments on the

Rules of Court', Vol. III, 1947 Ed., at p. 167, states:

'2. THE STATUTE OF FRAUDS IS APPLICABLE ONLY TO EXECUTORY CONTRACTS: CONTRACTS WHICH ARE EITHER TOTALLY OR PARTIALLY PERFORMED ARE WITHOUT THE STATUTE. The statute of frauds is applicable only to executory contracts. It is neither applicable to executed contracts nor to contracts partially performed. The reason is simple. In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting parties. The statute has been enacted to prevent fraud. On the other hand the commission of fraud in executed contracts is reduced to a minimum in executed contracts because (1) the intention of the parties is made apparent by the execution and (2) execution concludes, in most cases, the rights of the parties.' (Italics Ours)

"Under paragraphs 13 and 14 of the complaint (supra) one can readily see that the plaintiff has fulfilled ALL his obligations under the agreement between him and defendants concerning the 3,000 sq. ms. over which the latter had agreed to execute the proper documents of transfer. This fact is further projected in paragraph 15 of the complaint where plaintiff states:

'15). That in or about the middle of 1963, after all the conditions stated in paragraph 12 hereof had been fulfilled and fully complied with, plaintiff demanded of said defendants that they execute the Deed of Conveyance in his favor and deliver the title certificate in his name, over the 3,000 sq. ms. but defendants failed and refused and continue to fail and refuse to heed his demands.' (Par. 15, Complaint; Italics Ours).

"In view of the foregoing, we respectfully submit that this Honorable Court erred in holding that the statute of frauds is applicable to plaintiff's claim over the 3,000 sq. ms. There having been full performance of the contract on plaintiff's part, the same takes this case out of the context of said statute.

Plaintiff's Cause of Action has NOT Prescribed:

"With all due respect to this Honorable Court, we also submit that the Court committed error in holding that this action has prescribed:

"ORDER

xx xx xx

'On the issue of the statute of limitations, the Court holds that the plaintiff's action has prescribed. It is alleged in par. 11 of the complaint that, sometime in 1952, the defendants approached the plaintiff to prevail upon the Deudors to enter into a compromise agreement in Civil Case No. Q-135 and allied cases. Furthermore, pars. 13 and 14 of the complaint alleged that plaintiff acted as emissary of both parties in conveying their respective proposals and counter-proposals until the final settlement was effected on March 16, 1953 and approved by the Court on April 11, 1953. In the present action, which was instituted on January 24, 1964, the plaintiff is seeking to enforce the supposed agreement entered into between him and the defendants in 1952, which has already prescribed.' (at p. 3, Order).

"The present action has not prescribed, especially when we consider carefully the terms of the agreement between plaintiff and the defendants. First, we must draw the attention of this Honorable Court to the fact that this is an action to compel defendants to execute a Deed of Conveyance over the 3,000 sq. ms. subject of their agreement. In paragraph 12 of the complaint, the terms and conditions of the contract between the parties are spelled out. Paragraph 12 (b) of the complaint states:

'(b) That as of date of signing the compromise agreement, plaintiff shall be the owner of the 3,000 sq. ms. but the documents evidencing his title over this property shall be executed and delivered by defendants to plaintiff within ten (10) years from and after date of signing of the compromise agreement.' (Italics Ours).

"The compromise agreement between defendants and the Deudors which was concluded through the efforts of plaintiff, was signed on 16 March 1953. Therefore, the defendants had ten (10) years from said date within which to execute the deed of conveyance in favor of plaintiff over the 3,000 sq. ms. As long as the 10 years period has not expired, plaintiff had no right to compel defendants to execute the document and the latter were under no obligation to do so. Now, this 10-year period elapsed on March 16, 1963. THEN and ONLY THEN does plaintiff's cause of action against defendants accrue. Therefore, the period of prescription began to run against plaintiff only on March 17, 1963. Thus, under paragraph 15 of the complaint (supra) plaintiff made demands upon defendants for the execution of the deed 'in or about the middle of 1963.'

"Since the contract now sought to be enforced was not reduced to writing, plaintiff's cause of action expires on March 16, 1969 or six years from March 16, 1963 WHEN THE CAUSE OF ACTION ACCRUED (Art. 1145, Civil Code).

"In this posture, we again respectfully submit that this Honorable Court erred in holding that plaintiff's action has prescribed.

"P R A Y E R

"WHEREFORE, it is respectfully prayed that this Honorable Court reconsider its Order dated August 13, 1964; and issue another order denying the motions to dismiss of defendants G. Araneta, Inc. and J. M. Tuason Co. Inc. for lack of merit." (Pp. 70-85, Record on Appeal.)

Defendants filed an opposition on the main ground that "the arguments adduced by the plaintiff are merely reiterations of his arguments contained in his Rejoinder to Reply and Opposition, which have not only been refuted in herein defendant's Motion to Dismiss and Reply but already passed upon by this Honorable Court."

On September 7, 1964, the trial court denied the motion for reconsideration thus:

"After considering the plaintiff's Motion for Reconsideration of August 20, 1964 and it appearing that the grounds relied upon in said motion are mere repetition of those already resolved and discussed by this Court in the order of August 13, 1964, the instant motion is hereby denied and the findings and conclusions arrived at by the Court in its order of August 13, 1964 are hereby reiterated and affirmed.

"SO ORDERED." (Page 90, Rec. on Appeal.)

Under date of September 24, 1964, plaintiff filed his record on appeal.

In his brief, appellant poses and discusses the following assignments of error:

"I. THAT THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT ON THE GROUND THAT APPELLANT'S CLAIM OVER THE 3,000 SQ. MS. IS ALLEGEDLY UNENFORCEABLE UNDER THE STATUTE OF FRAUDS;

"II. THAT THE COURT A QUO FURTHER COMMITTED ERROR IN DISMISSING APPELLANT'S COMPLAINT ON THE GROUND THAT HIS CLAIM OVER THE 3,000 SQ. MS. IS ALLEGEDLY BARRED BY THE STATUTE OF LIMITATIONS; and

"III. THAT THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION IN SO FAR AS APPELLANT'S CLAIM FOR REIMBURSEMENT OF EXPENSES AND FOR SERVICES RENDERED IN THE IMPROVEMENT OF THE FIFTY (50) QUIÑONES, IS CONCERNED.

We agree with appellant that the Statute of Frauds was erroneously applied by the trial court. It is elementary that the Statute refers to specific kinds of transactions and that it cannot apply to any that is not enumerated therein.

And the only agreements or contracts covered thereby are the following:

"(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

"(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

(a) An agreement that by its terms is not to be performed within a year from the making thereof;

(b) A special promise to answer for the debt, default, or miscarriage of another;

(c) An agreement made in consideration of marriage, other than a mutual promise to marry;

(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

(f) A representation as to the credit of a third person.

"(3) Those where both parties are incapable of giving consent to a contract. (Art. 1403, Civil Code.)

In the instant case, what appellant is trying to enforce is the delivery to him of 3,000 square meters of land which he claims defendants promised to do in consideration of his services as mediator or intermediary in effecting a compromise of the civil action, Civil Case No. 135, between the defendants and the Deudors. In no sense may such alleged contract be considered as being a "sale of real property or of any interest therein." Indeed, not all dealings involving interest in real property come under the Statute.

Moreover, appellant's complaint clearly alleges that he has already fulfilled his part of the bargain to induce the Deudors to amicably settle their differences with defendants as, in fact, on March 16, 1963, through his efforts, a compromise agreement between these parties was approved by the court. In other words, the agreement in question has already been partially consummated, and is no longer merely executory. And it is likewise a fundamental principle governing the application of the Statute that the contract in dispute should be purely executory on the part of both parties thereto.

We cannot, however, escape taking judicial notice, in relation to the compromise agreement relied upon by appellant, that in several cases We have decided, We have declared the same rescinded and of no effect. In *J. M. Tuason & Co., Inc. vs. Bienvenido Sanvictores*, 4 SCRA 123, the Court held:

"It is also worthy of note that the compromise between Deudor and Tuason, upon which Sanvictores predicates his right to buy the lot he occupies, has been validly rescinded and set aside, as recognized by this Court in its decision in *G. R. No. L-13768, Deudor vs. Tuason*, promulgated on May 30, 1961."

We repeated this observation in *J. M. Tuason & Co., Inc. vs. Teodosio Macalindong*, 6 SCRA 938. Thus, viewed from what would be the ultimate conclusion of appellant's case, We entertain grave doubts as to whether or not he

can successfully maintain his alleged cause of action against defendants, considering that the compromise agreement that he invokes did not actually materialize and defendants have not benefited therefrom, not to mention the undisputed fact that, as pointed out by appellees, appellant's other attempt to secure the same 3, 000 square meters via the judicial enforcement of the compromise agreement in which they were supposed to be reserved for him has already been repudiated by the courts. (pp. 5-7, Brief of Appellee Gregorio Araneta, Inc.)

As regards appellant's third assignment of error, We hold that the allegations in his complaint do not sufficiently constitute a cause of action against defendants-appellees. Appellant's reliance on Article 2142 of Civil Code is misplaced. Said article provides:

"Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another."

From the very language of this provision, it is obvious that a presumed quasi-contract cannot emerge as against one party when the subject matter thereof is already covered by an existing contract with another party. Predicated on the principle that no one should be allowed to unjustly enrich himself at the expense of another, Article 2142 creates the legal fiction of a quasi-contract precisely because of the absence of any actual agreement between the parties concerned. Corollarily, if the one who claims having enriched somebody has done so pursuant to a contract with a third party, his cause of action should be against the latter, who in turn may, if there is any ground therefor, seek relief against the party benefited. It is essential that the act by which the defendant is benefited must have been voluntary and unilateral on the part of the plaintiff. As one distinguished civilian puts it, "The act is voluntary, because, the actor in quasi-contracts is not bound by any pre-existing obligation to act. It is unilateral, because it arises from the sole will of the actor who is not previously bound by any reciprocal or bilateral agreement. The reason why the law creates a juridical relation and imposes certain obligations is to prevent a situation where a person is able to benefit or take advantage of such lawful, voluntary and unilateral acts at the expense of said actor." (Ambrosio Padilla, Civil Law, Vol. VI, p. 748, 1969 ed.) In the case at bar, since appellant has a clearer and more direct recourse against the Deudors with whom he had entered into an agreement regarding the improve-ments and expenditures made by him on the land of appellees, it cannot be said, in the sense contemplated in Article 2142, that appellees have been enriched at the expense of appellant.

In the ultimate, therefore, Our holding above that appellant's first two assignments of error are well taken cannot save the day for him. Aside from his having no cause of action against appellees, there is one plain error of omission We have found in the order of the trial court which is as good a ground as any other for Us to terminate this case favorably to appellees. In said order which We have quoted in full earlier in this opinion, the trial court ruled that "the grounds relied upon in said motion are mere repetitions of those already resolved and discussed by this Court in the order of August 13, 1964", an observation which We fully share. Virtually, therefore, appellant's motion for reconsideration was ruled to be pro-forma. Indeed, a cursory reading of the record on appeal reveals that appellant's motion for reconsideration above-quoted contained exactly the same arguments and manner of discussion as his February 6, 1964 "Opposition to Motion to Dismiss" of defendant Gregorio Araneta, Inc. (pp. 17-25, Rec. on Appeal) as well as his February 17, 1964 "Opposition to Motion to Dismiss of Defendant J. M. Tuason & Co." (pp. 33-45, Rec. on Appeal) and his February 29, 1964 "Rejoinder to Reply of Defendant J. M. Tuason & Co. ". (pp. 52-64, Rec. on Appeal) We cannot see anything in said motion for reconsideration that is substantially different from the above oppositions and rejoinder he had previously submitted and which the trial court had already considered when it rendered its main order of dismissal. Consequently, appellant's motion for reconsideration did not suspend his period for appeal. (Estrada vs. Sto. Domingo, 28 SCRA 890, 905-6.) And as this point was covered by appellees' "Opposition to Motion for Reconsideration" (pp. 86-89), hence, within the frame of the issues below, it is within the ambit of Our authority as the Supreme Court to consider the same here

even if it is not discussed in the briefs of the parties. (Insular Life Assurance Co., Ltd. Employees Association-NATU vs. Insular Life Assurance Co., Ltd. [Resolution en banc of March 10, 1977 in G. R. No. L-25291]).

Now, the impugned main order was issued on August 13, 1964, while the appeal was made on September 24, 1964 or 42 days later. Clearly, this is beyond the 30-day reglementary period for appeal. Hence, the subject order of dismissal was already final and executory when appellant filed his appeal.

WHEREFORE, the appeal of Faustino Cruz in this case is dismissed. No costs.

Fernando, (Chairman), Antonio, Aquino, and Martin*, JJ., concur.
Concepcion, Jr., J., did not take part.

* Designated to sit in the Second Division.

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