

**PILAR N. BORROMELO, MARIA B. PUTONG, FEDERICO V. BORROMELO,
JOSE BORROMELO, CONSUELO B. MORALES AND CANUTO V.
BORROMELO, JR., PETITIONERS, VS. COURT OF APPEALS AND JOSE
A. VILLAMOR...**

G.R. No. L-22962. September 28, 1972

Ponente: FERNANDO, J.

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FERNANDO, J.:

The point pressed on us by private respondents[1] in this petition for review of a decision of the Court of Appeals in the interpretation of a stipulation which admittedly is not free from ambiguity, there being a mention of a waiver of the defense of prescription, is not calculated to elicit undue judicial sympathy. For if accorded acceptance, a creditor, now represented by his heirs,[2] who, following the warm and generous impulse of friendship, came to the rescue of a debtor from a serious predicament of his own making would be barred from recovering the money loaned. Thus the promptings of charity, unfortunately not often persuasive enough, would be discredited. It is unfortunate then that respondent Court of Appeals did not see it that way. For its decision to be upheld would be to subject the law to such a scathing indictment. A careful study of the relevant facts in the light of applicable doctrines calls for the reversal of its decision.

The facts as found by the Court of Appeals follow: "Before the year 1933, defendant [Jose A. Villamor] was a distributor of lumber belonging to Mr. Miller who was the agent of the Insular Lumber Company in Cebu City. Defendant being a friend and former classmate of plaintiff [Canuto O. Borrromeo] used to borrow from the latter certain amounts from time to time. On one occasion with some pressing obligation to settle with Mr. Miller, defendant borrowed from plaintiff a large sum of money for which he mortgaged his land and house in Cebu City. Mr. Miller filed a civil action against the defendant and attached his properties including those mortgaged to plaintiff, inasmuch as the deed of mortgage in favor of plaintiff could not be registered because not properly drawn up. Plaintiff then pressed the defendant for settlement of his obligation, but defendant instead offered to execute a document promising to pay his indebtedness even after the lapse of ten years. Liquidation was made and defendant was found to be indebted to plaintiff in the sum of P7,220.00, for which defendant signed a promissory note therefor on November 29, 1933 with interest at the rate of 12% per annum, agreeing to pay 'as soon as I have money'. The note further stipulates that defendant 'hereby relinquish, renounce, or otherwise waive my rights to the prescriptions established by our Code of Civil Procedure for the collection or recovery of the above sum of P7,220.00. * * * at any time even after the lapse of ten years from the date of this instrument'. After the execution of the document, plaintiff limited himself to verbally requesting defendant to settle his indebtedness from time to time. Plaintiff did not file any complaint against the defendant within ten years from the execution of the document as there was no property registered in defendant's name, who furthermore assured him that he could collect even after the lapse of ten years. After the last war, plaintiff made various oral demands, but defendants failed to settle his account, — hence the present complaint for collection." [3] It was then noted in the decision under review that the Court of First Instance of Cebu did sentence the original defendant, the deceased Jose A.

Villamor, to pay Canuto O. Borromeo, now represented by petitioners, the sum of P7,220.00 within ninety days from the date of the receipt of such decision with interest at the rate of 12% per annum from the expiration of such ninety-day period. That was the judgment reversed by the Court of Appeals in its decision of March 7, 1964, now the subject of this petition for review. The legal basis was the lack of validity of the stipulation amounting to a waiver in line with the principle "that a person cannot renounce future prescription." [4]

The rather summary and curt disposition of the crucial legal question of respondent Court in its five-page decision, regrettably rising not too-far-above the superficial level of analysis hardly commends itself for approval. In the first place, there appeared to be undue reliance on certain words employed in the written instrument executed by the parties to the total disregard of their intention. That was to pay undue homage to verbalism. That was to ignore the warning of Frankfurter against succumbing to the vice of literalism in the interpretation of language whether found in a constitution, a statute, or a contract. Then, too, in effect it would nullify what ought to have been evident by a perusal that is not-too-cursory, namely, that the creditor moved by ties of friendship was more than willing to give the debtor the utmost latitude as to when his admittedly scanty resources will allow him to pay. He was not renouncing any right; he was just being considerate, perhaps excessively so. Under the view of respondent Court, however, what had been agreed upon was in effect voided. That was to run counter to the well-settled maxim that between two possible interpretations, that which saves rather than destroys is to be preferred. What vitiates most the appealed decision, however, is that it would amount not to just negating an agreement duly entered into but would put a premium on conduct that is hardly fair and could be characterized as duplicitous. Certainly, it would reflect on a debtor apparently bent all the while on repudiating his obligation. Thus he would be permitted to repay an act of kindness with based ingratitude. Since as will hereafter be shown, there is, on the contrary, the appropriate construction of the wording that found its way in the document, one which has all the earmarks of validity and at the same time is in consonance with the demands of justice and morality, the decision on appeal, as was noted at the outset, must be reversed.

1. The facts rightly understood argue for the reversal of the decision arrived at by respondent Court of Appeals. Even before the event that gave rise to the loan in question, the debtor, the late Jose A. Villamor, being a friend and a former classmate, used to borrow from time to time various sums of money from the creditor, the late Canuto O. Borromeo. Then faced with the need to settle a pressing obligation with a certain Miller, he did borrow from the latter sometime in 1933 what respondent Court called "a large sum of money for which he mortgaged his land and house in Cebu City." [5] It was noted that this Miller, did file a suit against him, attaching his properties including those he did mortgage to the late Borromeo, there being no valid objection to such a step as the aforesaid mortgage, not being properly drawn up, could not be registered. Mention was then made of the late Borromeo in his lifetime seeking the satisfaction of the sum due him with Villamor unable to pay, but executing a document promising "to pay his indebtedness even after the lapse of ten years." [6] It is with such a background that the words employed in the instrument of November 29, 1933 should be viewed. There is nothing implausible in the view that such language renouncing the debtor's right to the prescription established by the Code of Civil Procedure should be given the meaning, as noted in the preceding sentence of the decision of respondent Court, that the debtor could be trusted to pay even after the termination of the ten-year prescriptive period. For as was also made clear therein, there had been since then verbal requests on the part of the creditor made to the debtor for the settlement of such a loan. Nor was the Court of Appeals unaware that such indeed was within the contemplation of the parties as shown by this sentence in its decision: "Plaintiff did not file any complaint against the defendant within ten years from the execution of the document as there was no property registered in defendant's name who furthermore assured him that he could collect even after the lapse of ten years." [7]

2. There is much to be said then for the contention of petitioners that the reference to the prescriptive period is susceptible to the construction that only after the lapse thereof could the demand be made for the payment of the

obligation. Whatever be the obscurity occasioned by the words is illumined when the light arising from the relation-ship of close friendship between the parties as well as the unsuccessful effort to execute a mortgage, taken in connection with the various oral demands made, is thrown on them. Obviously, it did not suffice for the respondent Court of Appeals. It preferred to reach a conclusion which for it was necessitated by the strict letter of the law untinged by any spirit of good morals and justice, which should not be alien to legal norms. Even from the standpoint of what for some is strict legalism, the decision arrived at by the Court of Appeals calls for disapproval. It is a fundamental principle in the interpretation of contracts that while ordinarily the literal sense of the words employed is to be followed, such is not the case where they "appear to be contrary to the evident intention of the contracting parties," which "intention shall prevail." [8] Such a codal provision has been given full force and effect since the leading case of *Reyes vs. Limjap*, [9] a 1910 decision. Justice Torres, who penned the above decision, had occasion to reiterate such a principle when he spoke for the Court in *De la Vega vs. Ballilos* [10] thus: "The contract entered into by the contracting parties which has produced between them rights and obligations is in fact one of *antichresis*, for article 1281 of the Civil Code prescribes among other things that if the words should appear to conflict with the evident intent of the contracting parties, the intent shall prevail." [11] In *Abella vs. Gonzaga*, [12] this Court through the then Justice Villamor, gave force to such a codal provision when he made clear that the inevitable conclusion arrived at was "that although in the contract Exhibit A the usual words 'lease,' 'lessee,' and 'lessor' were employed, that is no obstacle to holding, as we do hereby hold, that said contract was a sale on installments, for such was the evident intention of the parties in entering into said contract." [13] Only lately in *Nielson and Company vs. Lepanto Consolidated Mining Company*, [14] this Court, with Justice Zaldivar, as ponente, after stressing the primordial rule that in the construction and interpretation of a document, the intention of the parties must be sought, went on to state: "This is the basic rule in the interpretation of contracts because all other rules are but ancillary to the ascertainment of the meaning intended by the parties. And once this intention has been ascertained it becomes an integral part of the contract as though it had been originally expressed therein in unequivocal terms * * *." [15] While not directly in point, what was said by Justice Labrador in *Tumaneng vs. Abad* [16] is relevant: "There is no question that the terms of the contract are not clear on the period of redemption. But the intent of the parties thereto is the law between them, and it must be ascertained and enforced." [17] Nor is it to be forgotten, following what was first announced in *Velasquez vs. Teodoro* [18] that "previous, simultaneous and subsequent acts of the parties are properly cognizable indicia of their true intention." [19]

There is another fundamental rule in the interpretation of contracts specifically referred to in *Kasilag vs. Rodriguez*, [20] as "not less important" [21] than other principles which "is to the effect that the terms, clauses and conditions contrary to law, morals and public order should be separated from the valid and legal contract when such separation can be made because they are independent of the valid contract which expresses the will of the contracting parties. Manresa, commenting on article 1255 of the Civil Code and stating the rule of separation just mentioned, gives his views as follows: 'On the supposition that the various pacts, clauses, or conditions are valid, no difficulty is presented; but should they be void, the question is as to what extent they may produce the nullity of the principal obligation. Under the view that such features of the obligation are added to it and do not go to its essence, a criterion based upon the stability of juridical relations should tend to consider the nullity as confined to the clause or pact suffering therefrom, except in cases where the latter, by an established connection or by manifest intention of the parties, is inseparable from the principal obligation, and is a condition, juridically speaking, of that the nullity of which it would also occasion.' * * * The same view prevails in the Anglo-American law, as condensed in the following words: 'Where an agreement founded on a legal consideration contains several promises, or a promise to do several things, and a part only of the things to be done are illegal, the promises which can be separated, or the promise, so far as it can be separated, from the illegality, may be valid. The rule is that a lawful promise made for a lawful consideration is not invalid merely because an

unlawful promise was made at the same time and for the same consideration, and this rule applies, although the invalidity is due to violation of a statutory provision, unless the statute expressly or by necessary implication declares the entire contract void. * * *"[22]

Nor is it to be forgotten that as early as *Compania Agricola Ultramar vs. Reyes*,[23] decided in 1904, the then Chief Justice Arellano in a concurring opinion explicitly declared: "It is true that contracts are not what the parties may see fit to call them, but what they really are as determined by the principles of law." [24] Such a doctrine has been subsequently adhered to since then. As was rephrased by Justice Recto in *Aquino vs. Dealda*: [25] "The validity of these agreements, however, is one thing, while the juridical qualification of the contract resulting therefrom is very distinctively another." [26] In a recent decision, *Shell Company of the Phils., Ltd. vs. Firemen's Insurance Co. of Newark*, [27] this Court, through Justice Padilla, reaffirmed the doctrine thus: "To determine the nature of a contract courts do not have or are not bound to rely upon the name or title given it by the contracting parties, should there be a controversy as to what they really had intended to enter into, but the way the contracting parties do or perform their respective obligations, stipulated or agreed upon may be shown and inquired into, and should such performance conflict with the name or title given the contract by the parties, the former must prevail over the latter." [28] Is it not rather evident that since even the denomination of the entire contract itself is not conclusively determined by what the parties call it but by the law, a stipulation found therein should likewise be impressed with the characterization the law places upon it?

What emerges in the light of all the principles set forth above is that the first ten years after November 29, 1933 should not be counted in determining when the action of creditor, now represented by petitioners, could be filed. From the joint record on appeal, it is undoubted that the complaint was filed on January 7, 1953. If the first ten-year period was to be excluded, the creditor had until November 29, 1953 to start judicial proceedings. After deducting the first ten-year period which expired on November 29, 1943, there was the additional period of still another ten years. [29] Nor could there be any legal objection to the complaint by the creditor Borromeo of January 7, 1953 embodying not merely the fixing of the period within which the debtor Villamor was to pay but likewise the collection of the amount that until then was not paid. An action combining both features did receive the imprimatur of the approval of this Court. As was clearly set forth in *Tiglao vs. The Manila Railroad Company*: [30] "There is something to defendant's contention that in previous cases this Court has held that the duration of the term should be fixed in a separate action for that express purpose. But we think the lower court has given good reasons for not adhering to technicalities in its desire to do substantial justice." [31] The justification became even more apparent in the latter portion of the opinion of Justice Alex Reyes for this Court: "We may add that defendant does not claim that if a separate action were instituted to fix the duration of the term of its obligation, it could present better proofs than those already adduced in the present case. Such separate action would, therefore, be a mere formality and would serve no purpose other than to delay." [32] There is no legal obstacle then to the action for collection filed by the creditor. Moreover, the judgment of the lower court, reversed by the respondent Court of Appeals, ordering the payment of the amount due is in accordance with law.

3. There is something more to be said about the stress in the *Tiglao* decision on the sound reasons for not adhering to technicalities in this Court's desire to do substantial justice. The then Justice, now Chief Justice, Concepcion expressed a similar thought in emphasizing that in the determination of the rights of the contracting parties "the interest of justice and equity be not ignored." [33] This is a principle that dates back to the earliest years of this Court. The then Chief Justice Bengzon in *Arrieta vs. Bellos*, [34] invoked equity. Mention has been made of "practical and substantial justice," [35] "[no] sacrifice of the substantial rights of a litigant in the altar of sophisticated technicalities with impairment of the sacred principles of justice," [36] "to afford substantial justice," [37] and "what equity demands." [38] There has been disapproval when the result reached is "neither fair, nor equitable." [39] What is to be avoided is an interpretation that "may work injustice rather than promote

justice." [40] What appears to be most obvious is that the decision of respondent Court of Appeals under review offended most grievously against the above fundamental postulate that underlies all systems of law.

WHEREFORE, the decision of respondent Court of Appeals of March 7, 1964 is reversed, thus giving full force and effect to the decision of the lower court of November 15, 1956. With costs against private respondents.

Concepcion, C.J., Zaldivar, Castro, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Makalintal, J., is on official leave.

[1] The private respondents are Felisa Villamor, Rosario V. Liao Lamco, Manuel Villamor, Amparo V. Cotton, Miguel Villamor and Carmen-cita Villamor, who were substituted for the original defendant in the lower court, Jose A. Villamor, now deceased.

[2] The petitioners are Pilar N. Borromeo, Maria B. Putong, Federico V. Borromeo, Jose Borromeo, Consuelo V. Morales and Canuto V. Borromeo, Jr., who were substituted for the original plaintiff Canuto O. Borromeo.

[3] Decision of respondent Court of Appeals, Appendix A to Brief for Petitioners, pp. I-III.

[4] Ibid, p. IV.

[5] Decision of respondent Court of Appeals, Appendix A to Brief for Petitioners, p. I.

[6] Ibid, p. II.

[7] Ibid, p. II.

[8] According to Article 1281 of the Civil Code of Spain of 1899 in force at the time of the construction: "If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal sense of its wordings shall be followed. If the words appear to be contrary to the evident intention of the contracting parties, the intention shall prevail." Such a provision is now embodied as Article 1370 of the present Civil Code.

[9] 15 Phil. 420.

[10] 34 Phil. 683 (1916).

[11] Ibid, 689.

[12] 56 Phil. 132 (1931). Cf. Valdez vs. Sibal, 46 Phil. 930 (1924).

[13] Ibid, 139.

[14] L-21601, December 17, 1966, 18 SCRA 1040.

[15] Ibid, 1050.

[16] 92 Phil. 18 (1952).

[17] Ibid, 20.

[18] 46 Phil. 757 (1923).

[19] Bacordo vs. Alcantara, L-20080, July 30, 1965, 14 SCRA 730.

[20] 69 Phil. 217 (1939).

[21] Ibid, 226.

- [22] Ibid, 226-227.
- [23] 4 Phil. 2.
- [24] Ibid, 23.
- [25] 63 Phil. 583 (1936).
- [26] Ibid, 592.
- [27] 100 Phil. 757 (1957).
- [28] Ibid, 764.
- [29] Cf. Calero vs. Carrion, 107 Phil. 549 (1960).
- [30] 98 Phil. 181 (1956).
- [31] Ibid, 184.
- [32] Ibid, 185.
- [33] Macoy vs. Trinidad, 95 Phil. 192 (1954).
- [34] L-17162, Oct. 31, 1964, 12 SCRA 296.
- [35] Sarabia vs. Secretary of Agriculture, 104 Phil. 151 (1958).
- [36] Potenciano vs. Court of Appeals, 104 Phil. 156 (1958).
- [37] People vs. Martinez, 105 Phil. 200 (1959).
- [38] Macaraig vs. Dy Sun, 105 Phil. 332 (1959).
- [39] Lao Chit vs. Security Bank, 105 Phil. 490 (1959).
- [40] Cabuang vs. Bello, 105 Phil. 1135 (1959).

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