

**DEVELOPMENT BANK OF THE PHILIPPINES (DBP), PETITIONER, VS.
THE HONORABLE MIDPANTO L. ADIL, JUDGE OF THE SECOND
BRANCH OF THE COURT OF FIRST INSTANCE OF ILOILO AND
SPOUSES PATRIC...**

G.R. No. L-48889. May 11, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The issue posed in this petition for review on certiorari is the validity of a promissory note which was executed in consideration of a previous promissory note the enforcement of which had been barred by prescription.

On February 10, 1940 spouses Patricio Confesor and Jovita Villafuerte obtained an agricultural loan from the Agricultural and Industrial Bank (AIB), now the Development Bank of the Philippines (DBP), in the sum of P2,000.00, Philippine Currency, as evidenced by a promissory note of said date whereby they bound themselves jointly and severally to pay the account in ten (10) equal yearly amortizations. As the obligation remained outstanding and unpaid even after the lapse of the aforesaid ten-year period, Confesor, who was by then a member of the Congress of the Philippines, executed a second promissory note on April 11, 1961 expressly acknowledging said loan and promising to pay the same on or before June 15, 1961. The new promissory note reads as follows --

"I hereby promise to pay the amount covered by my promissory note on or before June 15, 1961. Upon my failure to do so, I hereby agree to the foreclosure of my mortgage. It is understood that if I can secure a certificate of indebtedness from the government of my back pay I will be allowed to pay the amount out of it."

Said spouses not having paid the obligation on the specified date, the DBP filed a complaint dated September 11, 1970 in the City Court of Iloilo City against the spouses for the payment of the loan.

After trial on the merits a decision was rendered by the inferior court on December 27, 1976, the dispositive part of which reads as follows:

"WHEREFORE, premises considered, this Court renders judgment, ordering the defendants Patricio Confesor and Jovita Villafuerte Confesor to pay the plaintiff Development Bank of the Philippines, jointly and severally, (a) the sum of P5,760.96 plus additional daily interest of P1.04 from September 17, 1970, the date Complaint was filed, until said amount is paid; (b) the sum of P576.00 equivalent to ten (10%) of the total claim by way of attorney's fees and incidental expenses plus interest at the legal rate as of September 17, 1970, until fully paid; and (c) the costs of the suit."

Defendants-spouses appealed therefrom to the Court of First Instance of Iloilo wherein in due course a decision was rendered on April 28, 1978 reversing the appealed decision and dismissing the complaint and counter-claim with costs against the plaintiff.

A motion for reconsideration of said decision filed by plaintiff was denied in an order of August 10, 1978.

Hence this petition wherein petitioner alleged that the decision of respondent judge is contrary to law and runs counter to decisions of this Court when respondent judge (a) refused to recognize the law that the right to prescription may be renounced or waived; and (b) that in signing the second promissory note respondent Patricio Confessor can bind the conjugal partnership; or otherwise said respondent became liable in his personal capacity.

The petition is impressed with merit.

The right to prescription may be waived or renounced. Article 1112 of Civil Code provides:

"Art. 1112. Persons with capacity to alienate property may renounce prescription already obtained, but not the right to prescribe in the future.

Prescription is deemed to have been tacitly renounced when the renunciation results from acts which imply the abandonment of the right acquired."

There is no doubt that prescription has set as to the first promissory note of February 10, 1940. However, when respondent Confesor executed the second promissory note on April 11, 1961 whereby he promised to pay the amount covered by the previous promissory note on or before June 15, 1961, and upon failure to do so, agreed to the foreclosure of the mortgage, said respondent thereby effectively and expressly renounced and waived his right to the prescription of the action covering the first promissory note.

This Court had ruled in a similar case that -

"x x x when a debt is already barred by prescription, it cannot be enforced by the creditor. But a new contract recognizing and assuming the prescribed debt would be valid and enforceable x x x." [1]

Thus, it has been held -

"Where, therefore, a party acknowledges the correctness of a debt and promises to pay it after the same has prescribed and with full knowledge of the prescription he thereby waives the benefit of prescription." [2]

This is not a mere case of acknowledgment of a debt that has prescribed but a new promise to pay the debt. The consideration of the new promissory note is the pre-existing obligation under the first promissory note. The statutory limitation bars the remedy but does not discharge the debt.

"A new express promise to pay a debt barred x x x will take the case from the operation of the statute of limitations as this proceeds upon the ground that as a statutory limitation merely bars the remedy and does not discharge the debt, there is something more than a mere moral obligation to support a promise, to wit -- a pre-existing debt which is a sufficient consideration for the new promise; the new promise upon this sufficient consideration constitutes, in fact, a new cause of action." [3]

"x x x x It is this new promise, either made in express terms or deduced from an acknowledgement as a legal implication, which is to be regarded as reanimating the old promise, or as imparting vitality to the remedy (which by lapse of time had become extinct) and thus enabling the creditor to recover upon his original contract." [4]

However, the court a quo held that in signing the promissory note alone, respondent Confesor cannot thereby bind his wife, respondent Jovita Villafuerte, citing Article 166 of the New Civil Code which provides:

"Art. 166. Unless the wife has been declared a non compos mentis or a spendthrift, or is under civil interdiction or is confined in a leprosarium, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. If she refuses unreasonably to give her consent, the court may compel her to grant the same."

We disagree. Under Article 165 of the Civil Code, the husband is the administrator of the conjugal partnership. As such administrator, all debts and obligations contracted by the husband for the benefit of the conjugal partnership, are chargeable to the conjugal partnership.[5] No doubt, in this case, respondent Confesor signed the second promissory note for the benefit of the conjugal partnership. Hence the conjugal partnership is liable for this obligation.

WHEREFORE, the decision subject of the petition is reversed and set aside and another decision is hereby rendered reinstating the decision of the City Court of Iloilo City of December 27, 1976, without pronouncement as to costs in this instance. This decision is immediately executory and no motion for extension of time to file motion for reconsideration shall be granted.

SO ORDERED.

Narvasa and Cruz, JJ., concur. Griño-Aquino, J., no part. The Confessors are my relatives.

[1] Villaroel vs. Estrada, 71 Phil. 140.

[2] Tauch vs. Gondram, 20 La. Ann. 156, cited on page 7, Vol. 4, Tolentino's New Civil Code of the Philippines.

[3] Johnson vs. Evans, 50 Am. Dec. 669.

[4] Mattingly vs. Boyd, 20 How (US) 128, 15 Led 845; St. John vs. Garrow, 4 Port. (Ala) 223, 29 Am. Dec. 280. American Jurisprudence – Vol. 34, page 233 (Statute of Limitations).

[5] Article 161(1), Civil Code.

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