

**ROSARIO GREY VDA. DE ALBAR AND JOSE M. GREY, PETITIONERS,
VS. JOSEPA FABIE DE CARANGDANG, RESPONDENT.***G. R. No. 13361. December 29, 1959*

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-13361/>**BAUTISTA ANGELO, J.:**

Dona Rosario Fabie y Grey was the owner of a lot situated in the City of Manila with a building and improvements thereon erected at 950-956 Ongpin as evidenced by Original Certificate of Title No. 5030, and by a will left by her upon her death which was duly probated she devised the naked ownership of the whole property to Rosario Grey Vda. de Albar, et al. but its usufruct to Josefa Fabie for life.

The pertinent provision of the will reads as follows: "Lego a mi a ahijada menor de edad, Maria Josefa de la Paz Fabie, en usufructo vitalicio las rentas de las fincas * * * en la calle Ongpin, Numeros 950 al 956 del Distrito de Santa Cruz, Manila, * * * y prohibo enajene, hipoteque, permuta o transfiera de algun modo mientras que ella sea menor de edad." Said property was registered in the name of Rosario Grey Vda. de Albar, et al. as naked owners and the right of Josefa Fabie as life usufructuary was expressly noted on the new title. Pursuant to the 9th clause of the will, an encumbrance was likewise noted on the title prohibiting the usufructuary from selling, mortgaging or transferring her right of usufruct during her minority.

During "liberation, as a consequence of the fire that gutted the buildings in many portions of Manila, the building on the Ongpin lot was burned, leaving only the walls and other improvements that were not destroyed by the fire.

One Au Pit, a Chinaman, offered to lease the property for a period of five years at a monthly rental of P500.00, at the same time agreeing to construct on the lot a new building worth P30,000.00 provided the naked owners as well as the usufructuary sign the agreement of lease. As the usufructuary maintains that she has the exclusive right to cede the property by lease and to receive the full rental value by virtue of her right of usufruct while on the other hand the naked owners maintain that the right of usufruct was extinguished when the building was destroyed, the right of the usufructuary being limited to the legal interest on the value of the lot and the materials, in order that the agreement of lease may be effected, the parties agreed on a temporary compromise whereby the naked owners would receive P100.00, or 20% of the monthly rental of P500.00 and the usufructuary the balance of 80% or P400.00 of said monthly rental. It was likewise stipulated in the agreement that the title to the building to be constructed would accrue to the land upon its completion as an integral part of the lot covered by the transfer certificate of title issued in the name of the naked owners but subject to the right of usufruct of Josef a Fabie. The parties expressly reserved the right to litigate their respective claims after the termination of the contract of lease to determine which of said claims was legally correct.

By reason of the destruction of the building on the Ongpin property, the United States War Damage Commission approved the claim that was presented for the damage caused to the property in the amount of P8,574.00 which was paid to and received by the naked owners. In the meantime, the usufructuary paid the real estate taxes due on the property at Ongpin for the years 1945 to 1952 in the total amount of P1,989.27, as well as the real estate taxes

for the years 1953 and 1954 in the annual sum of P295.80.

On October 2, 1952, Rosario Grey Vda. de Albar, et al commenced the present action to settle the dispute and conflicting views entertained by the parties in line with their agreement and prayed that judgment be rendered declaring that the usufruct in favor of Josefa Fabie is now only limited to receiving the legal interest on the value of the land, and that her right to receive any rental under the contract entered into between the parties has already ceased.

On August 10, 1953, the trial court rendered judgment the dispositive part of which reads:

"EN VIRTUD DE TODO LO CUAL, el Juzgado promulga decisi6n a favor de la demandada usufructuaria, declarando:

(a) Que su usufructo vitalicio continua sobre la finca en Ongpin con derecho exclusivo de percibir durante su vida la totalidad de sus rentas, sin que los demandantes tengan derecho de inmiscuirse en la administracion de dicha finca;

(b) Con derecho de percibir el 6% de la cantidad de P8,574.00 percibidos como indemnizacion de guerra desde Enero 11, 1950;

(c) Al reembolso de la suma de P1,989.27 pagados o abonados por la demandada como pagos del amillaramiento desde la fecha de la Contestacion, Octubre 22, 1953;

(d) Mas la suma de P2,000.00 como danos y perjuicios en forma de honorarios de abogado y gastos de litigio.

(e) Con las costas a cargo de los demandantes."

On appeal by plaintiffs, the Court of Appeals modified the decision as follows:

"Wherefore, we hereby affirm the decision appealed from in so far as it holds that appellee's right of life usufruct subsists and is in full force and effect upon the Ongpin lot and the building now existing thereon, and that she is entitled to receive from appellants the legal interest or 6% interest per annum of the amount of P3,272.00 from the time it was actually received from the Philippine War Damage Commission for the whole period of the usufruct, and appellants are hereby required to give sufficient security for the payment of such interest, and we hereby reverse said decision, declaring: that reimbursement to appellee of the sum of P1,987.27 paid by her for real estate taxes is deferred until the termination of the usufruct, and that she is not entitled to any amount for attorney's fees. Without pronouncement regarding costs."

Plaintiffs interposed the present petition for review.

The main issue to be determined fringes on the interpretation of that portion of the will which devises to Josefa Fabie all the rentals of the property situated in Ongpin and Sto. Cristo Streets, City of Manila. The pertinent provision of the will reads: "Lego a mi ahijada menor de edad Maria Josefa de la Paz Fabie, en usufructo vitalicio las rentas de las tinas situadas en la calle Santo Cristo * * * y en la calle Ongpin, Numeros 950 al 956 del Distrito de Santa Cruz, Manila." Petitioners contend that this provision of the will should be interpreted as constituting only a life usufruct on the rentals of the buildings erected on the lands and that once these buildings are destroyed the usufruct is extinguished. Respondent, on the other hand, contends that that provision should be interpreted as constituting a life usufruct both on the buildings and the lands because the former cannot be separated from the latter.

In *Lopez vs. Constantino*, 74 Phil., 160, we said:

"It may indeed seem at first blush that the rents out of which the pension was payable were earned by or paid for the building only, independently of the lot on which it was erected; but further reflection will show that

such impression is wrong. When both land and building belong to the same owner, as in this case, the rents on the building constitute an earning of the capital invested in the acquisition of both land and building. There can be a land without a building, but there can be no building without land. The land, being an indispensable part of the rented premises cannot be considered as having no rental value whatsoever." (Italics supplied)

In another part of the decision, this Court said: "Since appellant's participation in the rents of the leased premises by way of life pension was part of the consideration of the sale, it cannot be deemed extinguished so long as she lives and so long as the land exists, because that land may be rented to anyone who may desire to erect a building thereon," (Italics supplied)

From the above, it is clear that when the deceased constituted the life usufruct on the rentals of the "fincas situadas" in Ongpin and Sto. Cristo streets, she meant to impose the encumbrance both on the building and the land on which it is erected for indeed the building cannot exist without the land. And as this Court well said, "The land, being an indispensable part of the rented premises cannot be considered as having no rental value whatsoever." Moreover, in the Spanish language, the term "fincas" has a broad scope; it includes not only building but land as well. (Diccionario Ingles-Español, por Martines Amador) Since only the building was destroyed and the usufruct is constituted not only on the building but on the land as well, then the usufruct is not deemed extinguished by the destruction of the building for under the law usufruct is extinguished only by the total loss of the thing subject of the encumbrance (Article 603, old Civil Code).

In our opinion, this case comes under Article 517 of the same Code which provides: "If the usufruct is constituted on immovable property of which a building forms part, and the latter should be destroyed in any manner whatsoever, the usufructuary shall have a right to make use of the land and materials." This is a temporary measure calculated to maintain the usufruct alive until the very thing that has been destroyed be reconstructed or replaced. The reason is obvious: since the usufruct has not been extinguished by the destruction of the building and the usufruct is for life as in this case, it is but fair that the usufructuary continue to enjoy the use of the land and the materials that may have been left by the fire or to the use of the new building that may be constructed on the land. To hold otherwise would be to affirm that the usufruct has been extinguished.

The question that now arises is: Who is called upon to undertake the new construction, and at whose cost? Of course, this is addressed to the wisdom and discretion of the usufructuary who, to all intents and purposes is deemed as the administrator of the property. This has been clarified in the case of *Fabie vs. Gutierrez David*, 75 Phil., 536, which was litigated between the same parties and wherein the scope of the same provision of the will has been the subject of interpretation. The following is what this Court said:

"Construing said judgment in the light of the ninth clause of the will of the deceased Rosario Fabie y Grey, which was quoted in the decision and by which Josefa Fabie was made the usufructuary during her lifetime of the income of the property in question, we find that the said usufructuary has the right to administer the property in question. All the acts of administration—to collect the rents for herself, and to conserve the property by making all necessary repair and paying all the taxes, special assessments, and insurance premiums thereon—were by said judgment vested in the usufructuary. The pretension of the respondent Juan Grey that he is the administrator of the property with the right to choose the tenants and to dictate the conditions of the lease is contrary to both the letter and spirit of the said clause of the will, the stipulation of the parties, and the judgment of the court. He cannot manage or administer the property after all the acts of management or administration have been vested by the court, with his consent, in the usufructuary."

In the instant case, however, a happy compromise was reached by the parties in view of the offer of one Chinaman to lease the land for five years and to construct thereon a building worth P30,000.00 upon the condition that upon its completion the building would become an integral part of the land on which it is erected. This means that its naked ownership should belong to petitioners and its beneficial ownership to respondent. This is a happy

medium which fits into the purpose contemplated in Article 517 above referred to: that the usufruct should continue on the land and the new improvement that may be constructed thereon.

We therefore hold that the Court of Appeals did not err in finding that appellee's right of usufruct subsists and is in full force and effect upon the Ongpin lot and the building existing thereon, affirming the decision of the trial court.

Petitioners' contention that the Court of Appeals erred in ruling that the damages paid by the War Damage Commission to said petitioners was intended to be an indemnity for the destruction of the building in question and in ordering them to pay respondent 6% interest per annum on the amount of the damage paid is also untenable, for it cannot be denied that a war damage payment is intended to replace part of the capital invested in the building destroyed or to assuage somewhat the material loss of its owner. It cannot be maintained that war damage payments are intended to be a mere gesture of appreciation of the people of the United States of America towards our people for it is a well-known fact that countless of our countrymen who suffered in the last war or whose kin-folks lost their lives did not receive any war damage payment because they have no damaged property that could be indemnified. The ruling that 6% interest per annum of such war damage payment should be paid to respondent from the time it was actually received to the end of the life of the usufruct should, in my opinion, be modified in the sense that that obligation should only be valid up to the date the new building was constructed by the Chinaman who leased the property upon the theory that the amount of damage paid by the War Damage Commission which was intended to replace the old building has in turn been replaced by the new. However, the majority is of the opinion that the same should also be subject to usufruct for life because it has not been used in the construction of the new building, although they suggested the alternative that the naked owners may turn over the money to the usufructuary so that she may use it during her lifetime subject to its return to them after her death if they desire to be relieved of this encumbrance.

We find, however, merit in the contention that the real estate taxes paid by respondent in her capacity as usufructuary for several years previous to the present litigation should be paid by her, as she did, instead of by petitioners not only because she is the only recipient of all the benefits of the property but because she bound herself to pay such taxes in a formal agreement approved by the court in Civil Case No. 1659 oi; the Court of First Instance of Manila (Fabie vs. Gutierrez David, supra). In that case, which involved the same parties and the same properties subject of usufruct, the parties submitted an amicable agreement which was approved by the court wherein the usufructuary, herein respondent, bound herself to pay all the real estate taxes, special assessment and insurance premiums, and make all the necessary repairs on each of the properties covered by the usufruct and in accordance with said agreement, respondent paid all the taxes for the years 1945 to 1954. In said agreement, it was also stipulated that the same "shall be in effect during the term of the usufruct and shall be binding on the successors and assigns of each of the parties." There is therefore no valid reason why petitioners should now be ordered to reimburse respondent for all the real taxes she had paid on the property. In this respect, the decision of the Court of Appeals should be modified.

Wherefore, with the modification that petitioners should not be made to reimburse the real estate taxes paid by the respondent for the years abovementioned, the decision appealed from is affirmed in all other respects, without pronouncement as to costs.

Labrador, Endencia, Barrera, and Gutierrez David, JJ., concur.

CONCURRING AND DISSENTING
MONTEMAYOR, J.:

I concur in the learned opinion of the majority, penned by Mr. Justice Bautista Angelo, with the exception of that portion thereof on page 10, which holds that the payment to the usufructuary of the 6% interest per annum of the war damage payment should end on the date of the construction of the new building by the Chinaman who leased the property, from which ruling I dissent.

It will be noticed that both the trial court and the Court of Appeals were of the opinion that said payment of interest should continue during the lifetime of the usufruct. I agree to said opinion. The reason is obvious. The war damage payment is the equivalent of the building destroyed. Since the usufructuary had a right to the use or the fruits of the building, she therefore had the right to the interest on the war damage payment during her lifetime. In my opinion, the construction of the new building does not relieve the owners of the land who received the war damage payment from continuing the payment of interest. Had said owners of the land used the war damage payment to construct the building, then they would be free from paying interest because the rent of the new building would correspond to the interest on the war damage payment. But the fact is the new building was not constructed by the owners of the land, but by the Chinese lessee.

The majority opinion states that the usufructuary would then be receiving the interest on the war damage payment and also the rent of the new building—a sort of double benefit, which is said to be unfair. That is one view. The other view is that at the end of the usufruct, the owners of the land or their heirs shall have received not only equivalent or value of the old building destroyed, in the form of the war damage payment but also the new building constructed absolutely at no cost or expense to them— also a double benefit, which might also be regarded as unfair following the point of view of the majority opinion. So, in this respect of double benefit, both parties stand on the same footing. Viewed thus, there is nothing unfair in the arrangement.

Furthermore, we should not lose sight of the fact that the usufructuary, as the majority opinion well states has a right to the use and the fruits not only of the improvements, such as buildings on the land, but of the land itself. Consequently, anything built on the land would be subject to the usufruct, and the fruits thereof, such as rents, would go to the usufructuary. This naturally includes the interest on the war damage payment for the old building destroyed during the war, which payment is the equivalent of said building. Had the owners of the land used the amount of said payment to construct another building on the land, or should they have used the sum to add another story or extension of the building constructed thereon by the Chinese lessee, there would surely be no question that any rent therefrom would belong to the usufructuary, because then it could be regarded as improvement on the land, which, as already said, is the equivalent or a reproduction of said old building. Just because the owners of the land kept said war damage payment for their own use did not relieve them of the obligation of paying the interest on the same to the usufructuary, because otherwise, they would be having not only the naked ownership of the equivalent of said building, but also its fruits.

The foregoing are some of the reasons for my dissent.

Paras, C. J., Bengzon, and Concepcion, JJ., concur.

REYES, J. B. L., J.:

I concur in the opinion of Justice Montemayor, specially because the usufructuary receives only a part of the rent of the new building.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.