

**SPOUSES EULALIO CUENO AND FLORA BONIFACIO CUENO,
PETITIONERS, VS. SPOUSES EPIFANIO AND VERONICA BAUTISTA,
SPOUSES RIZALDO AND ANACITA BAUTISTA, SPOUSES DIONILO AND
MARY ROSE BAU...**

G.R. No. 246445. March 02, 2021

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CAGUIOA, J:

The instant Petition[1] assails the Decision[2] dated October 8, 2018 (assailed Decision) and Resolution[3] dated March 5, 2019 (assailed Resolution) of the Court of Appeals, Special Twenty-Second Division (CA), in CA-G.R. CV No. 04862-MIN, which reversed the Decision[4] dated February 1, 2017 of the Regional Trial Court of Zamboanga City, Branch 16 (RTC) and ordered the dismissal of the complaint filed by Spouses Eulalio and Flora Bonifacio Cueno (collectively referred to as petitioners).

Facts and Antecedent Proceedings

The dispute involves conflicting claims of ownership over a parcel of land now registered in the name of the children of Spouses Epifanio and Veronica Bautista.[5] The facts as culled from the assailed Decision, are as follows:

Lot No. 2836 was previously owned by the two sons of Ramon Bonifacio, i.e., Luis Bonifacio (Luis), married to Juana Toribio (Juana), and Isidro Bonifacio (Isidro), married to Victoria Falcatan (Victoria).[6] These two sons sold part of their interest to the City of Zamboanga and retained about 7,991 sq. m. (subject property) as co-owners.[7]

Petitioner Flora Bonifacio Cueno (Flora) is the daughter of Luis and Juana and is married to petitioner Eulalio Cueno (Eulalio).[8] In 1961, petitioners bought the pro indiviso share of Isidro in the subject property, as reflected in an Escritura de Venta[9] dated October 23, 1961 (first sale). Pursuant to said sale, Transfer Certificate of Title (TCT) No. T-20,676[10] was issued on April 13, 1967 in the names of Luis and Eulalio.

Prior to the issuance of TCT No. T-20,676, Eulalio supposedly sold his and Flora's share of the lot to the latter's father, Luis, without Flora's consent.[11] This sale was covered by another Escritura de Venta[12] dated December 4, 1963 (second sale).

The second sale was also registered on April 13, 1967, the same day TCT No. T-20,676 was issued in the names of Luis and Eulalio.[13] Thereafter, TCT No. T-20,676 was cancelled and TCT No. T-20,677[14] was issued solely in the name of Luis, married to Juana.

In a Deed of Absolute Sale[15] dated August 12, 1977 (third sale), Luis allegedly sold the property to herein respondents. Hence, TCT No. T-20,677 was cancelled and TCT No. T-49,239[16] was registered in the name of Spouses Epifanio and Veronica Bautista (collectively referred to as respondents).[17]

Thereafter, it appears that respondents took possession of the property and built improvements on the same. Much

later, or on October 14, 2005, respondents donated the subject property to their four children (namely Rizaldo, Dionilo, Jessibel, and Mercedita) and TCTs were issued in the latter's names.[18]

Allegedly deprived of their share in the property through fraud, petitioners filed a Complaint[19] on November 10, 2008 for recovery of shares and participation in the subject property, recovery of possession, declaration of nullity of the second sale and donation, and cancellation of the TCTs issued in the names of the Bautista children.[20] They claimed that 1) they never sold their share to Luis and the second sale was invalid for lack of Flora's consent, and 2) Flora's father, Luis, never sold the subject property to herein respondents.[21]

Respondents, on the other hand, claimed that they acquired the subject property in good faith and for value from the registered owner thereof, Luis, as evidenced by the Deed of Absolute Sale dated August 12, 1977. They further alleged that they constructed their houses on said lot and continuously possessed the same for over 30 years without objection or protest from petitioners.[22]

The Ruling of the RTC

In its Decision[23] dated February 1, 2017, the RTC granted the complaint and declared the second sale between Eulalio and Luis void.[24]

Although the RTC field that fraud and/or forgery was not proven, it invalidated the sale for lack of the spousal consent of Flora.[25] The RTC concluded that since the second sale was void and could not be a source of any rights, TCT No. T-20,677 issued in the name of Luis and all subsequent deeds and titles were likewise void[26] and any action thereon was imprescriptible.[27]

The RTC, however, upheld the third sale between respondents and Luis insofar as the latter's inchoate share over the property.[28] The RTC further stated that respondents were possessors and builders in good faith and were thus entitled to indemnity for the improvements introduced into the property pursuant to Article 448 of the Civil Code.[29]

The Ruling of the CA

In the assailed Decision, the CA reversed the decision of the RTC, the dispositive portion of which stated:

WHEREFORE, premises considered, the instant appeal is GRANTED. The 1 February 2017 Decision of the Regional Trial Court, Branch 16, Zamboanga City, is REVERSED and SET ASIDE. Accordingly, Appellees Spouses Eulalio and Flora Cueno's Complaint dated 10 November 2008 is DISMISSED.

SO ORDERED.[30]

Without expressly discussing whether the second sale was indeed void for lack of spousal consent, the CA held that respondents had a better right over the subject properties as they were innocent purchasers in good faith and for value[31] and had the right to rely on the face of the Torrens certificate of title. In this case, respondents relied on the face of TCT No. T-20,677, which was duly registered in the name of their seller, Luis, and which had no annotations thereon.[32]

Petitioners thus filed the instant Petition alleging that 1) the second sale is void as Article 166 of the Civil Code requires the consent of the wife before the husband may alienate any conjugal property,[33] and 2) respondents were not innocent purchasers for value.[34]

Issue

Whether the CA erred in ordering the dismissal of petitioners' complaint.

The Court's Ruling

The Petition lacks merit.

Preliminarily, the Petition raises questions of fact, i.e., whether petitioners sold their share to Luis and whether the latter actually sold and delivered the same to respondents,[35] that are not generally cognizable in a Rule 45 petition for review on certiorari.[36] It is settled that the Court is not a trier of facts and the factual findings of the lower courts are given great weight. While petitioners claim that Eulalio never sold their share to his father-in-law, Luis, and that the latter never sold the subject lot to respondents, the RTC unequivocally found that petitioners failed to prove the same.[37] These findings are binding on the Court. Indeed, it appears that both the Escritura de Venta dated December 4, 1963[38] and the Deed of Absolute Sale dated August 12, 1977[39] are public documents. Thus, they "enjoy the presumption of regularity and due execution. Absent evidence that is clear, convincing and more than merely preponderant, the presumption must be upheld." [40]

Notably, the RTC invalidated the second sale solely on the ground of lack of spousal consent.[41] Without discussing the foregoing issue however, the CA directly stated that respondents had a better right over the subject property as they were innocent purchasers for value.[42] As the CA failed to resolve the issue of whether the second sale was indeed void for lack of spousal consent, the Court shall do so now.

Petitioners essentially argue that the second sale executed by Eulalio in favor of his father-in-law is void for lack of marital consent.[43] As such, the latter could not transfer any right to herein respondents and the action to recover the same is imprescriptible. The argument lacks merit.

It bears emphasis that under Article 1413[44] of the Spanish Civil Code, the wife's consent was not required for the sale of conjugal property as the husband's right to administer and dispose of the same was considered "full, absolute and complete." [45] On the other hand, Articles 96[46] and 124[47] of the Family Code unequivocally state that a disposition of community or conjugal property without the consent of the other spouse is void but shall constitute a "continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors." [48]

In the instant case, petitioners admit that the subject property belonged to the conjugal partnership of petitioners and that it was acquired by them in 1963 during the effectivity of the Civil Code.[49] As such, Articles 165 and 166 in relation to Article 173 of the Civil Code apply:[50]

Art. 165. The husband is the administrator of the conjugal partnership. (1412a)

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.

This article shall not apply to property acquired by the conjugal partnership before the effective date of this Code. (1413a)

x x x x

Art. 173. The wife may, during the marriage and within ten years from the transaction questioned ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband. (n) (Underscoring

supplied)

Recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, explained:

Under the [Spanish] Civil Code the husband had full authority to alienate or encumber the conjugal partnership property without the consent of the wife. This rule has been changed in view of the new position of the wife under the [Civil] Code and for the purpose of protecting the wife against illegal or unlawful alienations made by the husband. In line with this purpose[,] alienations made by the husband of real properties cannot now be made without the consent of the wife except in cases provided for by law.

x x x Under our present Code all dispositions, alienations or encumbrances of conjugal real property acquired after the effectivity of the new Civil Code needs the consent of the wife. Also, all donations of real or personal property require the consent of the wife except those to the common children for securing their future or finishing a career, and moderate donations for charity. But should the wife refuse unreasonably to give her consent, the court may compel her to grant the same.[51]

Unlike the settled rules under the Spanish Civil Code and the Family Code however, there appears to be an ongoing conflict of characterizations as regards the status of alienations or encumbrances that fail to comply with Article 166 of the Civil Code. The first view treats such contracts as void 1) on the basis of lack of consent of an indispensable party and/or 2) because such transactions contravene mandatory provisions of law. On the other hand, the second view holds that although Article 166 requires the consent of the wife, the absence of such consent does not render the entire transaction void but merely voidable in accordance with Article 173 of the Civil Code. These interpretations are discussed further below.

Conflicting characterizations of contracts falling under Article 166

In the 1957 case of *Tabunan v. Marigmen, et al.*,[52] the Court en banc recognized that the inequitable and lopsided rule under the Spanish Civil Code impelled the amendment of the law through Article 166 of the Civil Code, which rightfully required the consent of the wife for the disposition of any conjugal real property.[53]

Thus, in the 1966 case of *Tolentino v. Cardenas, et al.*,[54] the Court en banc declared the sale of a house as "x x x null and void for lack of the necessary marital consent as provided in Article 166 of the [N]ew Civil Code." [55] In the same year however, the Court en banc also promulgated *Villocino v. Doyon*[56] (*Villocino*), which stated in its lone footnote that a sale that fails to comply with Article 166 "x x x is not void but only voidable at the instance of the wife [under] Civil Code[,] Art. 173." [57]

In 1968, the Court en banc declared in *Bucoy v. Paulino*[58] (*Bucoy*) that the "nullity" of a sale made without the wife's consent "x x x is decreed by the Code not on the basis of prejudice but lack of consent of an indispensable party to the contract under Article 166." Nevertheless, the Court recognized in the same case that the remedy of the wife in such cases is to enforce her right to annul said contract under Article 173 of the same Code,[59] viz.:

x x x Adverted to elsewhere in this opinion is that plaintiffs suit against defendants is to enforce her right upon the provisions of Article 173 of the Civil Code, thus:

"ART. 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of the property fraudulently alienated by the husband."

As we go into the legal history of Article 173 of the Civil Code, we find a marked difference between the same and its predecessor, Article 1413, paragraph 2, of the Spanish Civil Code, which provides that:

"Nevertheless, no alienation or agreement which the husband may make with respect to such [conjugal] property in contravention of this code or in fraud of the wife shall prejudice her or her heirs."

Where the old codal precept (Article 1413, par. 2, just quoted) speaks of prejudice to the wife or her heirs in an alienation "in contravention of this code," such prejudice to the wife is eliminated in Article 173 of the [N]ew Civil Code when it comes to a contract "entered into without her consent." The obvious reason is that such consent is now required under Article 166 of the [N]ew Civil Code; whereas, under the provisions of the first paragraph of Article 1413 of the Spanish Civil Code, the husband, in addition to his power as manager, "may for a valuable consideration alienate and encumber the property of the conjugal partnership without the consent of the wife." As the statute now stands, the right of the wife is directed at "the annulment of any contract," referring to real property of the conjugal partnership entered into by the husband "without her consent."

The plain meaning attached to the plain language of the law is that the contract, in its entirety, executed by the husband without the wife's consent, may be annulled by the wife. Had Congress intended to limit such annulment in so far as the contract shall "prejudice" the wife, such limitation should have been spelled out in the statute. It is not the legitimate concern of this Court to recast the law. As Mr. Justice Jose B.L. Reyes of this Court and Judge Ricardo C. Puno of the Court of First Instance correctly stated, "[t]he rule (in the first sentence of Article 173) revokes [Baello v. Villanueva], 54 Phil. 213 and [Uy Coque v. Navas Sioca], 45 Phil. 430," in which cases annulment was held to refer only to the extent of the one-half interest of the wife. The two deeds of sale of June 18, 1963 and the deed of sale of July 5, 1963 are null and void in toto — as against Eufemia Bernardo.

The necessity to strike down the contract of July 5, 1963 as a whole, not merely as to the share of the wife, is not without its basis in the common-sense rule. To be underscored here is that upon the provisions of Articles 161, 162 and 163 of the Civil Code, the conjugal partnership is liable for many obligations while the conjugal partnership exists. Not only that. The conjugal property is even subject to the payment of debts contracted by either spouse before the marriage, as those for the payment of fines and indemnities imposed upon them after the responsibilities in Article 161 have been covered (Article 163, par. 3), if it turns out that the spouse who is bound thereby, "should have no exclusive property or if it should be insufficient." These are considerations that go beyond the mere equitable share of the wife in the property. These are reasons enough for the husband to be stopped from disposing of the conjugal property without the consent of the wife. Even more fundamental is the fact that the nullity is decreed by the Code not on the basis of prejudice but lack of consent of an indispensable party to the contract under Article 166.[60]

Noticeably, Bucoy's characterization of the contract as void is incompatible with the very remedy prescribed in that case.[61] In any event, although Bucoy confusingly characterized a sale executed in contravention of Article 166 as both void and voidable, the thrust of the discussion actually centered on whether the lack of marital consent affected only the disposition of the wife's share in the property or the transaction as a whole[62] and whether prejudice to the wife or her heirs was still necessary under Article 173 of the Civil Code.

Following the conflicting rulings of the Court, various cases[63] declared such contracts void not only for "x x x lack of consent of an indispensable party to the contract",[64] but also for having been executed in contravention of the mandatory requirements of Article 166. *De Leon v. De Leon*[65] (*De Leon*) explained:

It cannot be over-emphasized that the 1950 Civil Code is very explicit on the consequence of the husband alienating or encumbering any real property of the conjugal partnership without the wife's consent. To a specific point, the sale of a conjugal piece of land by the husband, as administrator, must, as a rule, be with the wife's consent. Else, the sale is not valid. So it is that in several cases we ruled that the sale by the husband of property belonging to the conjugal partnership without the consent of the wife is void ab initio, absent any showing that the latter is incapacitated, under civil interdiction, or like causes. The nullity, as we have

explained, proceeds from the fact that sale is in contravention of the mandatory requirements of Art. 166 of the Code. Since Art. 166 of the Code requires the consent of the wife before the husband may alienate or encumber any real property of the conjugal partnership, it follows that the acts or transactions executed against this mandatory provision are void except when the law itself authorized their validity.[66]

The foregoing view was recently cited in *Malabanan v. Malabanan, Jr.*,[67] which held that "x x x the sale of conjugal property by a spouse without the other's consent [under Article 166 of the Civil Code] is void. All subsequent transferees of the conjugal property acquire no rights whatsoever from the conjugal property's unauthorized sale." [68]

In contrast thereto, the second view characterizing such transactions as voidable was discussed by Justice Edgardo Paras, also a recognized Civil Law Commentator, in the 1991 case of *Roxas v. Court of Appeals*[69] (*Roxas*), in this wise:

The only issue before Us is whether or not a husband, as the administrator of the conjugal partnership, may legally enter into a contract of lease [that exceeds one year] involving conjugal real property without the knowledge and consent of the wife.

x x x x

Under the New Civil Code (NCC), "Art. 165. The husband is the administrator of the conjugal partnership," in view of the fact that the husband is principally responsible for the support of the wife and the rest of the family. If the conjugal partnership does not have enough assets, it is the husband's capital that is responsible for such support, not the paraphernal property. Responsibility should carry authority with it.

The husband is not an ordinary administrator, for while a mere administrator has no right to dispose of sell, or otherwise alienate the property being administered, the husband can do so in certain cases allowed by law. He is not required by law to render an accounting. Acts done under administration do not need the prior consent of the wife.

However, administration does not include acts of ownership. For while the husband can administer the conjugal assets unhampered, he cannot alienate or encumber the conjugal realty. Thus, under Art. 166 of NCC, "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." This rule prevents abuse on the part of the husband, and guarantees the rights of the wife, who is partly responsible for the acquisition of the property, particularly the real property. Contracts entered into by the husband in violation of this prohibition are voidable and subject to annulment at the instance of the aggrieved wife. (Art. 173 of the Civil Code)

x x x x

Thus, the joinder of the wife, although unnecessary for an oral lease of conjugal realty which does not exceed one year in duration, is required in a lease of conjugal realty for a period of more than one year, such a lease being considered a conveyance and encumbrance within the provisions of the Civil Code requiring the joinder of the wife in the instrument by which real property is conveyed or encumbered (See also 41 C.J.S., p. 1149). In case the wife's consent is not secured by the husband as required by law, the wife has the remedy of filing an action for the annulment of the contract-Art. 173 of the Civil Code states "the wife may, during the marriage and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required x x x."

In the case at bar, the allegation in paragraph 2 of the complaint indicates that petitioner's estranged husband, defendant Antonio S. Roxas had entered into a contract of lease with defendant Antonio M. Cayetano without

her marital consent being secured as required by law under Art. 166 of the Civil Code. Petitioner, therefore, has a cause of action under Art. 173 to file a case for annulment of the contract of lease entered into without her consent. Petitioner has a cause of action not only against her husband but also against the lessee, Antonio M. Cayetano, who is a party to the contract of lease.[70]

Adopting the foregoing view, *Heirs of Ignacia Aguilar-Reyes v. Mijares*[71] (*Aguilar-Reyes*) skillfully summarized the cases adopting the second view that a sale of conjugal real property entered into without the wife's consent is not void but merely voidable:

Under the regime of the Civil Code, the alienation or encumbrance of a conjugal real property requires the consent of the wife. The absence of such consent renders the entire transaction merely voidable and not void. The wife may, during the marriage and within ten years from the transaction questioned, bring an action for the annulment of the contract entered into by her husband without her consent.

x x x x

Articles 166 and 173 of the Civil Code, the governing laws at the time the assailed sale was contracted, provide:

x x x x

Pursuant to the foregoing provisions, the husband could not alienate or encumber any conjugal real property without the consent, express or implied, of the wife otherwise, the contract is voidable. Indeed, in several cases the Court had ruled that such alienation or encumbrance by the husband is void. The better view, however, is to consider the transaction as merely voidable and not void. This is consistent with Article 173 of the Civil Code pursuant to which the wife could, during the marriage and within 10 years from the questioned transaction, seek its annulment.[72]

In the case of *Heirs of Christina Ayuste v. Court of Appeals*, it was categorically held that —

There is no ambiguity in the wording of the law. A sale of real property of the conjugal partnership made by the husband without the consent of his wife is voidable. The action for annulment must be brought during the marriage and within ten years from the questioned transaction by the wife. Where the law speaks in clear and categorical language, there is no room for interpretation — there is room only for application.

Likewise, in *[Guiang] v. Court of Appeals*, the Court quoted with approval the ruling of the trial court that under the Civil Code, the encumbrance or alienation of a conjugal real property by the husband absent the wife's consent, is voidable and not void. Thus —

x x x Under Article 166 of the Civil Code, the husband cannot generally alienate or encumber any real property of the conjugal partnership without the wife's consent. The alienation or encumbrance if so made however is not null and void. It is merely voidable. The offended wife may bring an action to annul the said alienation or encumbrance. Thus, the provision of Article 173 of the Civil Code of the Philippines, to wit:

x x x x

This particular provision giving the wife ten (10) years [x x x] during [the] marriage to annul the alienation or encumbrance was not carried over to the Family Code. It is thus clear that any alienation or encumbrance made after August 3, 1988 when the Family Code took effect by the husband of the conjugal partnership property without the consent of the wife is null and void x x x.[73]

The view characterizing such transactions as merely voidable was more recently reiterated in *Vda. de Ramones v. Agbayani*,[74] *Bravo-Guerrero v. Bravo*[75] *Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr.*,[76] *Ros v. Philippine National Bank-Laoag Branch*[77] *Mendoza v. Fermin*[78] and the en banc case of *Spouses Fuentes v.*

Roca[79] which stated, albeit in an obiter dictum, that a sale made in violation of Article 166 of the Civil Code "is not void but merely voidable [under Article 173 and gave the wife] the right to have the sale annulled during the marriage within ten years from the date of the sale." [80]

To put an end to this recurring conflict on the proper characterization of such transactions, the Court now hereby adopts the second view espoused in Villocino, Roxas, and Aguilar-Reyes as the prevailing and correct rule, abandons all cases contrary thereto, and holds that a sale that fails to comply with Article 166 is not "void" but merely "voidable" in accordance with Article 173 of the Civil Code.

Non-compliance with Article 166 renders the contract merely voidable under Article 173

It is a threshold principle that provisions of law "x x x must not be read in separate parts. Rather, the law must be read in its entirety, because a statute is passed as a whole, and is animated by one general purpose and intent. Its meaning cannot be extracted from any single part thereof but from a general consideration of the statute as a whole." [81] In this regard, Article 166, when read in relation to Article 173, leads to the inescapable conclusion that a contract disposing or encumbering conjugal real property without the wife's consent is not void but merely voidable.

In *Fullido v. Grilli*, [82] the Court described the nature of void contracts in this wise:

A void or inexistent contract may be defined as one which lacks, absolutely either in fact or in law, one or some of the elements which are essential for its validity. It is one which has no force and effect from the very beginning, as if it had never been entered into; it produces no effect whatsoever either against or in favor of anyone. *Quod nullum est, nullum producit effectum*. [83] Article 1409 of the New Civil Code explicitly states that void contracts also cannot be ratified; neither can the right to set up the defense of illegality be waived. [84]

Abalos v. Macatangay, Jr., [85] further explained that "x x x a void contract cannot be ratified and the action or defense for the declaration of the inexistence of a contract does not prescribe. A void contract produces no effect either against or in favor of anyone — it cannot create, modify or extinguish the juridical relation to which it refers." [86]

In contrast, a voidable contract is one where "x x x consent is vitiated by lack of legal capacity of one of the contracting parties, or by mistake, violence, intimidation, undue influence or fraud x x x." [87] Unlike void contracts, "[v]oidable or annulable contracts, before they are set aside [by courts of law], are existent, valid, and binding, and are effective and obligatory between the parties." [88] They may be ratified [89] and the action to annul the same may be barred by prescription. [90]

Notably, Article 173 is explicit that the action for the annulment of a contract involving conjugal real property entered into by a husband without the wife's consent must be "brought 1) by the wife, 2) during the marriage, and 3) within ten years from the questioned transaction: [91]

Art. 173. The wife may, during the marriage and within ten years from the transaction questioned ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband. (n) (Underscoring supplied)

If any of the foregoing conditions is absent, the action for annulment will be considered as having been filed out of time. [92] The Court in *Bravo-Guerrero v. Bravo* [93] (*Bravo-Guerrero*), speaking through Senior Associate Justice Carpio, further explained—

Under the Civil Code, only the wife can ask to annul a contract that disposes of conjugal real property without her consent. The wife must file the action for annulment during the marriage and within ten years from the questioned transaction. Article 173 is explicit on the remedies available if the wife fails to exercise this right within the specified period. In such case, the wife or her heirs can only demand the value of the property provided they prove that the husband fraudulently alienated the property. Fraud is never presumed, but must be established by clear and convincing evidence.[94]

Article 173 is unambiguous that the failure to secure the wife's consent, when such consent is required,[95] does not render the contract void. Contrary to the nature of void contracts, transactions that fail to comply with Article 166 produce effects. The time-bound nature of the remedy provided under Article 173, in contrast to the imprescriptible nature of void contracts, demonstrates the voidable character of such contracts since the failure to bring the action within the period provided renders the contract between the husband and the third-person perfectly valid and binding.[96] *Vda. de Ramones v. Agbayani*[97] already held that "the wife's failure to file with the courts an action for annulment of the contract during the marriage and within ten (10) years from the transaction shall render the sale valid." [98] Indeed, even the right to demand the value of the property should the wife fail to exercise her right to annul confirms this voidable nature.[99] If said transaction were void, the remedy would have been mutual restitution.[100] Further, unlike void contracts that are subject to collateral attack by any interested party, the remedies available under Article 173 are expressly limited to the wife and, in proper cases, her heirs.

Evidently, the remedies and limitations provided under Article 173 in transactions covered by Article 166 are completely inconsistent with the nature of void contracts, which are subject to collateral attacks by interested parties,[101] do not prescribe[102] and have no force and effect.[103] Categorizing dispositions and encumbrances under Article 166 as void and thus imprescriptible would not only nullify Article 173 of the Civil Code but also render the limitations provided therein inutile.

At this juncture, the Court finds it proper to correct its ruling in *Bucoy* that contracts disposing of conjugal property without the wife's consent are "void for lack of consent of an indispensable party under Article 166." [104] This is not accurate.

It is not a matter of "lack of consent", which gives rise to a "no contract" situation under Article 1318 of the Civil Code.[105] Neither can the contract be considered "void" because it does not fall under any of those expressly mentioned in Article 1409 of the Civil Code.[106] Rather, Article 166 demonstrates that the husband has no legal capacity to alienate or encumber conjugal real property without his wife's consent. This is akin to an incapacity to give consent under Article 1390 of the Civil Code, which renders the contract merely voidable[107]:

Art. 1390. The following contracts are voidable or annulable, even though there may have been no damage to the contracting parties:

- (1) Those where one of the parties is incapable of giving consent to a contract;
- (2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification. (n) (Underscoring supplied)

Indeed, *Felipe v. Heirs of Maximo Aldon*[108] correctly recognized that one spouse has no capacity to give consent to a sale of conjugal property as the capacity to give consent expressly belongs to both spouses under Article 166 of the Civil Code.[109] It bears emphasis, however, that the wife's consent "may be given either expressly or impliedly x x x, [it] may be given before or after the alienation. If given before[,] it will validate the act and if given after, it will ratify the act inasmuch as the alienations made by the husband without the consent of

the wife are voidable at the instance of the wife or her heirs." [110]

In this regard, contracts falling under Article 166 may be considered a special type of voidable contract. Like ordinary voidable contracts, they are valid until annulled. They may be ratified and any action thereon prescribes in accordance with the law. Unlike ordinary voidable contracts that are governed by Articles 1390 to 1402, however, contracts executed in contravention of Article 166 may, by express mandate of Article 173, be brought only by the wife, "during the marriage and within ten years from the questioned transaction."

In view of the foregoing, the Court hereby overturns its prior statements in *Bucoy* and companion cases that contracts that fail to comply with Article 166 are void for lack of consent of an indispensable party. [111] As capacity to give consent to an alienation or encumbrance of conjugal real property belongs to both spouses under Article 166 of the Civil Code, the non-consenting wife may bring an action for annulment in accordance with the specific remedies provided under Article 173.

The Court likewise finds it proper to abandon its ruling in *De Leon* and companion cases that the nullity of contracts entered into without the wife's consent proceeds from the fact that transactions executed against mandatory provisions are void. [112]

While Article 5 of the Civil Code declares acts executed against the provisions of mandatory and prohibitory laws are void, it recognizes that this is not meant to be an absolute rule:

Art. 5. Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. (4a) (Underscoring supplied)

While Article 166 expressly requires the wife's consent, the remedies and limitations under Article 173 reveal the legislative intent to characterize these contracts as valid until annulled, i.e., voidable, and not void. Evidently, Article 166 in relation to Article 173 falls within the aforementioned exception as "a law that itself authorizes their validity."

In any event, as aptly raised by Justice Gesmundo during the deliberations, the Court in *Municipality of Camiling v. Lopez* [113] already held that not all acts executed in violation of provisions of law are ipso facto void. [114] Interpreting Article 4 of the Spanish Civil Code, the precursor of Article 5, the Court explained therein that the use of the word "void" in Article 5, which was translated and derived from the word "nulos" under the Spanish Civil Code, [115] may actually refer to both void and voidable contracts, viz.:

What creates our doubt is the incorrect interpretation given the term "nulos" in Article 4 of the old Civil Code. The acts declared void (*actos nulos*) are those executed in violation of the provisions of law. Not all of these are ipso facto void. They may be of two kinds, those that are ipso facto void and those which are merely voidable. (1 *Manresa* 119). [116]

Notably, the Court therein upheld that validity of a contract of lease that was executed without the approval of the provincial governor in violation of Section 2196 of the Revised Administrative Code. Rather than declaring said contract void, the Court held that said contract "could have been ratified after its execution in the ordinary course of administration. It is merely voidable at the option of the party who in law is granted the right to invoke its invalidity." [117]

Finally, it bears reiterating that unlike Articles 166 and 173 of the Civil Code, the Family Code now expressly declares that alienations or encumbrances of community or conjugal property without the consent of the other spouse are null and void, [118] viz.:

Art. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for

proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (206a)

Art. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (165a) (Underscoring supplied)

In *Guiang v. Court of Appeals*[119] (*Guiang*), the Court affirmed the observation of the RTC that the remedies afforded by Article 173 were not carried over to the Family Code, which thus signified the change in status of such transactions from the Civil Code to the Family Code. The Court agrees with the rationale in *Guiang* that the evident revisions under the Family Code are deliberate and confirm the legislative intent to change the status of such transactions from voidable under Civil Code to void under the Family Code.[120] However, the Court notes the special nature of these void transactions even under the Family Code, which can become binding contracts upon the acceptance by the other spouse or authorization by the court before the continuing offers are withdrawn by either or both spouses.

The second sale was voidable but the action to annul the same has prescribed

Applying the foregoing discussion to the case at bar, the Court holds that petitioners' claim that the second sale executed by Eulalio in favor of his father-in-law, Luis, is void and thus imprescriptible lacks merit.[121]

As previously explained, contracts that fail to comply with Article 166 are merely voidable. Article 173 unequivocally states that the action to annul the same must be brought 1) by the wife, 2) during the marriage, and 3) within ten years from the questioned transaction.[122]

The Court in *Heirs of Christina Ayuste v. Court of Appeals*[123] counted the ten-year period from the execution of the deed:

In the present case, the deed of sale was executed on February 27, 1987. Rafael Ayuste died on October 13, 1989. However, it was only on March 2, 1990 that Christina Ayuste filed her complaint with the lower court asking for the annulment of the sale. Although the action was filed within ten years from the questioned transaction, it was not brought during the existence of the marriage which was dissolved upon the death of Rafael Ayuste in 1989. Clearly, the action for annulment filed by Christina Ayuste was barred for having been filed out of time.[124]

The Court arrived at the same conclusion in *Vera Cruz v. Calderon*,^[125] where it held that "x x x while respondent filed her complaint for annulment of the deed of sale on July 8, 1994, i.e., within the ten-year period counted from the execution of the deed of sale of the property on June 3, 1986, the marriage between her and Avelino had already been dissolved by the death of the latter on November 20, 1993."^[126]

Similarly, in *Bravo-Guerrero*, the Court stated that "[u]nder the Civil Code, only the wife can ask to annul a contract that disposes of conjugal real property without her consent. The wife must file the action for annulment during the marriage and within ten years from the questioned transaction x x x. Respondents' action to annul the Deed of Sale based on Article 166 must fail for having been filed out of time. The marriage of Mauricio and Simona was dissolved when Mauricio died in 1973. More than ten years have passed since the execution of the Deed of Sale."^[127]

"Where the law speaks in clear and categorical language, there is no room for interpretation — there is room only for application."^[128] In view of the express wording of Article 173, the non-consenting wife must file her action within ten years from the questioned transaction, i.e., the execution of the relevant deed.^[129] Failing which, the remedy of the wife is "to demand from the husband or his heirs the value of the property after the dissolution of the marriage in case said alienation was in fraud of the wife."^[130]

In the present case, it appears from the *Escritura de Venta* between Eulalio and his father-in-law, Luis, that the former sold their share in the subject property to the latter without Flora's consent on December 4, 1963. Pursuant to Article 173, Flora's action to annul the contract accrued upon the execution of the sale in 1963 and she had 10 years from the questioned transaction to file an action to annul the same. Unfortunately, she failed or refused to exercise her right within the 10-year period. As her right to annul the second sale prescribed in 1973, the action commenced on January 14, 2009 was filed out of time. In view thereof, petitioners have no more right to question the subsequent sale by Luis in favor of respondents.

In view of the foregoing, the Petition must be denied. The Court clarifies, however, that in adopting the view espoused in *Villocino*, *Roxas*, and *Aguilar-Reyes*, it does not diminish the significance of Article 166 in correcting the inequitable situation imposed on wives under the Spanish Civil Code, but merely applies the clear and unequivocal language of the law on the rights and remedies available to her. Fortunately, the legislature has seen fit to reinforce the State's obligation to further ensure the fundamental equality of men and women before the law^[131] through the enactment of Articles 96 and 124 of the Family Code, which now give equal importance to the consent of the husband and the wife.

Having resolved the foregoing issues, the Court finds it unnecessary to rule on the other matters raised.

WHEREFORE, premises considered, the Petition is DENIED. The dismissal of the Spouses Eulalio and Flora Cueno's Complaint dated November 10, 2008 by the Regional Trial Court of Zamboanga City, Branch 16 in its Decision dated February 1, 2017 is hereby AFFIRMED.

SO ORDERED.

Peralta, C.J., Leonen, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, M. Lopez, Delos Santos, Gaerlan, Rosario, and J. Lopez, JJ., concur.

Perlas-Bernabe, J., please see concurring opinion.

[1] Rollo, pp. 23-39.

[2] *Id.* at 8-17. Penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices

Edgardo T. Lloren and Walter S. Ong.

[3] Id. at 19-20.

[4] Id. at 119-128. Penned by Presiding Judge Catherine C. Fabian.

[5] Id. at 9.

[6] Id.

[7] Id.

[8] Id.

[9] Id. at 109.

[10] Id. at 76.

[11] Id. at 10.

[12] Id. at 114.

[13] Id.

[14] Id. at 79.

[15] Id. at 82.

[16] Id. at 83.

[17] Id. at 120.

[18] Id. at 121.

[19] Id. at 60-68.

[20] Id. at 11.

[21] Id.

[22] Id.

[23] Supra note 4.

[24] Id. at 124.

[25] Id. at 11.

[26] Id. at 124.

[27] Id. at 127.

[28] Id. at 125.

[29] Id. at 126.

[30] Id. at 16.

[31] Id. at 14.

[32] Id. at 15.

[33] Id. at 30.

[34] Id. at 33.

[35] Id. at 126.

[36] Bravo-Guerrero v. Bravo, G.R. No. 152658, July 29, 2005, 465 SCRA 244, 255.

[37] Rollo, p. 11.

[38] Id. at 78.

[39] Id. at 206.

[40] Bravo-Guerrevo v. Bravo, supra note 36 at 264; Sps. Tapayan v. Martinez, 804 Phil. 523, 537 (2017); Baluyo v. De la Cruz, G.R. No. 197058, October 14, 2015, 722 SCRA 450, 460.

[41] Rollo, p. 11.

[42] Id. at 124.

[43] Id. at 30-33.

[44] SPANISH CIVIL CODE, Art. 1413 states:

Art. 1413. In addition to his powers as manager the husband may for a valuable consideration alienate and encumber the property of the conjugal partnership without the consent of the wife.

Nevertheless no alienation or agreement which the husband may make with respect to such property in contravention of this code or in fraud of the wife shall prejudice her or her heirs.

See Villocino v. Doyon, No. L-19797, December 17, 1966, 18 SCRA 1094, 1096 and Tabunan v. Marigmen, et al., 101 Phil. 288, 290 (1957).

[45] Harden v. Peña, 87 Phil. 609, 613-614 (1950); Tabunan v. Marigmen, id. at 290. See also discussion in Isabela Colleges, Inc. v. Heirs of Tolentino-Rivera, G.R. No. 132677, October 20, 2000, 344 SCRA 95, 106 and Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW, Volume I, Third Edition, 1967, p. 280.

[46] FAMILY CODE, Art. 96 provides:

Art. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (206a) (Underscoring supplied)

[47] Id., Art. 124 states:

Art. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for

proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (165a) (Underscoring supplied)

[48] *Id.* See *Gatmaytan v. Misibis Land, Inc.*, G.R. No. 222166, June 10, 2020.

[49] *Id.* at 30.

[50] See *Bravo-Guerrero v. Bravo*, *supra* note 36 at 257.

[51] *Supra* note 45 at 283; citations omitted.

[52] *Supra* note 44.

[53] *Id.* at 290-291. See also *Harden v. Pena*, *supra* note 45 at 613-614.

[54] No. L-20510, April 29, 1966, 16 SCRA 720.

[55] *Id.* at 723.

[56] *Supra* note 44.

[57] *Id.* at 1096.

[58] No. L-25775, April 26, 1968, 23 SCRA 248.

[59] *Id.* at 263. See also discussion in *Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr.*, G.R. No. 146548, December 18, 2009, 608 SCRA 394.

[60] *Id.* at 261-263. Underscoring supplied; citations omitted.

[61] As aptly raised by Associate Justice Alexander G. Gesmundo (Justice Gesmundo) during the Court's deliberations.

[62] *Id.*

[63] See *Nicolas v. Court of Appeals*, No. L-37631, October 12, 1987, 154 SCRA 635, 643; *Garcia v. Court of Appeals*, 215 Phil. 380 (1984); *Tolentino v. Cardenas, et al.*, *supra* note 54; *Abalos v. Macatangay, Jr.*, G.R. No. 155043, September 30, 2004, 439 SCRA 649; *De Leon v. De Leon*, G.R. No. 185063, July 23, 2009, 593 SCRA 768; *Malabanan v. Malabanan, Jr.*, G.R. No. 187225, March 6 2019 895 SCRA 135.

[64] *Bucoy v. Paulino*, *supra* note 58 at 263. Emphasis and underscoring supplied.

[65] *Supra* note 63.

[66] *Id.* at 781. Underscoring supplied; citations omitted. See *Nicolas v. Court of Appeals*, *supra* note 63 at 643; *Garcia v. Court of Appeals*, *supra* note 67 at 383; *Tolentino v. Cardenas, et al.*, *supra* note 54 at 723.

[67] *Supra* note 63.

[68] Id. at 154.

[69] G.R. No. 92245, June 26, 1991, 198 SCRA 541.

[70] Id. at 543-548. Underscoring supplied; citations omitted.

[71] G.R. No. 143826, August 28, 2003, 410 SCRA 97.

[72] Id. at 105. In his Concurring Opinion in *Heirs of Christina Ayuste v. Court of Appeals*, G.R. No. 118784, September 2, 1999, 313 SCRA 493, 501-503, Justice Jose C. Vitug, likewise a renowned Civil Law Commentator, explained: "The questioned sale was concluded on 27 February 1987, before the Family Code took effect; accordingly, the transaction could still be aptly governed by the then governing provisions of the Civil Code. Under this Code, the husband could not alienate or encumber any conjugal real property (acquired by the partnership after the effective date of the Civil Code) without the consent, express or implied, of the wife (Art. 166, Civil Code; *Bautista vs. Lovina*, 98 Phil. 1006, 1956); otherwise, said the Supreme Court in *Garcia vs. Court of Appeals* ([*supra* note 63]), reiterating *Tolentino vs. Cardenas, et al.*, ([*supra* note 54]), the disposition would be void. I share the view of my colleagues that such a contract, absent the wife's consent should be considered merely voidable consistently with Article 173 of the Civil Code under which provision, the wife could, during the marriage and within 10 years from the questioned transaction, seek its annulment (*Felipe vs. Heirs of Maximo Aldon*, [No. L-60174, February 16, 1983, 120 SCRA 628]; [*Lanuza*] *vs. De Leon*, [No. L-22331, June 6, 1967], 20 SCRA 369; see *Roxas vs. [Court of Appeals]*, [*supra* note 69], which applied Art. 173 to a lease contract). Failing to do so, she or her heirs, after the dissolution of the marriage, could demand the value of the property alienated (Art. 173, Civil Code). It might not be amiss to say that an unauthorized sale by the husband of conjugal real property, not being the administrator thereof, or of the exclusive parapherna of the wife, not having obtained her prior consent thereto, could be void under the provisions of Article 1874 of the Civil Code."

[73] Id. at 98-106, citing *Heirs of Christina Ayuste v. Court of Appeals*, *id.*; *Felipe v. Heirs of Maximo Aldon*, *id.*; *Roxas v. Court of Appeals*, *supra* note 69 at 546; *Guiang v. Court of Appeals*, G.R. No. 125172, June 26, 1998, 291 SCRA 372; and Vitug, *COMPENDIUM OF CIVIL LAW AND JURISPRUDENCE*, 1993 edition, p. 71. See also *Villaranda v. Villaranda*, G.R. No. 153447, February 23, 2004, 423 SCRA 571; *Bravo- Guerrero v. Bravo*, *supra* note 36; *Vda. de Ramones v. Agbayani*, G.R. No. 137808, September 30, 2005, 471 SCRA 306; *Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr.*, *supra* note 59; *Spouses Fuentes v. Roca*, G.R. No. 178902, April 21, 2010, 618 SCRA 702; *Ros v. Philippine National Bank-Laoag Branch*, G.R. No. 170166, April 6, 2011, 647 SCRA 334; *Mendoza v. Fermin*, G.R. No. 177235, July 7, 2014, 729 SCRA 219. Underscoring supplied.

[74] Id.

[75] *Supra* note 36.

[76] *Supra* note 59.

[77] *Supra* note 73.

[78] *Supra* note 73.

[79] *Supra* note 73.

[80] Id. at 710. The statement was obiter as the Court ultimately held that Article 124 of the Family Code, and not the Civil Code, was applicable.

[81] *Freedom from Debt Coalition v. Energy Regulatory Commission*, G.R. No. 161113, June 15, 2004, 432 SCRA 157, 182, as cited by Associate Justice Amy C. Lazaro-Javier (Justice Lazaro-Javier) during the

deliberations.

[82] G.R. No. 215014, February 29, 2016, 785 SCRA 278, as cited by Senior Associate Justice Estela M. Perlas-Bernabe (Senior Justice Perlas-Bernabe) during the deliberations.

[83] As aptly discussed by Senior Justice Perlas-Bernabe during the deliberations, this phrase means "[t]hat which is a nullity produces no effect," *Spouses Tan v. Bantegui*, 510 Phil. 434, 447 (2005), citing Ballentine, *LAW DICTIONARY WITH PRONUNCIATIONS* (1948), p. 1077.

[84] *Supra* note 82 at 293.

[85] *Abalos v. Macatangay, Jr.*, *supra* note 63 at 661.

[86] *Id.* See also *Leonardo v. Court of Appeals*, G.R. No. 125485, September 13, 2004, 438 SCRA 201, 214, as cited by Senior Justice Perlas-Bernabe and Justices Lazaro-Javier and Rodil V. Zalameda (Justice Zalameda).

[87] *Leonardo v. Court of Appeals*, *id.* at 214, as cited by Senior Justice Perlas-Bernabe and Justice Lazaro-Javier.

[88] *Estate of Pedro C. Gonzales v. Heirs of Marcos Perez*, G.R. No. 169681, November 5, 2009, 605 SCRA 47, 54-55.

[89] CIVIL CODE, Art. 1392 states:

Art. 1392. Ratification extinguishes the action to annul a voidable contract. (1309a)

[90] *Id.*, Art. 1391 provides:

Art. 1391. The action for annulment shall be brought within four years. This period shall begin: In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases. In case of mistake or fraud, from the time of the discovery of the same. And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases. (1301a)

[91] *Guiang v. Court of Appeals*, *supra* note 73 at 382.

[92] *Vera Cruz v. Calderon*, G.R. No. 160748, July 14, 2004, 434 SCRA 534, 541.

[93] *Supra* note 36. See CIVIL CODE, Art. 173.

[94] *Id.* at 257-258.

[95] CA Justice Eduardo P. Caguioa explained that the wife's consent is not required in the following cases: "(a) alienations or encumbrances of personal property no matter when acquired except donations which are not moderate, (b) alienations or encumbrances of real property acquired before the effectivity of the new Code, (c) alienations or encumbrances of real property acquired after the effectivity of the present Code in the following cases: (1) when the wife is declared non compos mentis, a spend-thrift, or under civil interdiction or confined in a leprosarium; (2) donations made by the husband to the common children in order to secure their future or finish their career; ([3]) for the payment of obligations of the partnership under Article 161; and lastly (4) moderate donations for charity." *Supra* note 45 at 288. Citations omitted.

[96] As discussed by Senior Justice Perlas-Bernabe during the Court's deliberations.

[97] *Supra* note 73.

[98] *Id.* at 309, citing *Villaranda v. Villaranda*, *supra* note 73.

[99] As discussed by Senior Justice Perlas-Bernabe during the Court's deliberations.

[100] Id.

[101] CIVIL CODE, Art. 1421 states:

Art. 1421 The defense of illegality of contract is not available to third persons whose interests are not directly affected.

[102] Id., Art. 1410 provides:

Art. 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.

[103] Fullido v. Grilli, supra note 82.

[104] Bucoy v. Paulino, supra note 58 at 263. See also Malabanan v. Malabanan, Jr., supra note 63 at 155.

[105] CIVIL CODE, Art. 1318 states:

Art. 1318. There is no contract unless the following requisites concur:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract;
- (3) Cause of the obligation which is established. (1261)

See also Fullido v. Grilli, supra note 82 at 293.

[106] As aptly explained by Justice Gesmundo during the deliberations, "lack of consent" is not one of the grounds for declaring a contract "void". See CIVIL CODE, Art. 1409 that states:

Art. 1409. The following contracts are inexistent and void from the beginning:

- (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
- (7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[107] As aptly explained by Justice Gesmundo during the deliberations, lack of capacity only renders a contract voidable pursuant to Art. 1390 of the Civil Code.

[108] Supra note 72 at 633, as cited by Justice Gesmundo during the deliberations.

[109] Id.

[110] Eduardo P. Caguioa, supra note 49 at 284. As likewise aptly discussed by Justice Zalameda during the deliberations, "the wife's failure or refusal to exercise her right within the prescribed period leads to the ratification or confirmation of the contract. Ratification is inconsistent with a declaration that a contract is null and void. Indeed, doctrinally and clearly, a void contract cannot be ratified."

[111] Id. See also Malabanan v. Malabanan, Jr., supra note 63.

[112] Id. See Nicolas v. Court of Appeals, supra note 63 at 643; Garcia v. Court of Appeals, supra note 63;

Tolentino v. Cardenas, et al., supra note 54.

[113] 99 Phil. 187 (1956).

[114] Id. at 189. As aptly raised by Justice Gesmundo during the deliberations.

[115] Id.

[116] Id. Underscoring supplied.

[117] Id. at 190.

[118] This aligns with the recognition of the State's obligation to ensure the fundamental equality of women and men before the law as provided for under Sections 2 and 5 of REPUBLIC ACT No. (R.A.) 7192, OTHERWISE KNOWN AS "WOMEN IN DEVELOPMENT AND NATION BUILDING ACT," approved on February 12, 1992.

[119] Supra note 73, as aptly cited by Justice Gesmundo.

[120] Id. at 588.

[121] Rollo, pp. 31-33.

[122] CIVIL CODE, Art. 173.

Art. 173. The wife may, during the marriage and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband. (Underscoring supplied). See also Guiang v. Court of Appeals, supra note 73 and Villaranda v. Villaranda, supra note 73.

[123] Supra note 72.

[124] Id. at 500-501. Underscoring supplied; citations omitted.

[125] G.R. No. 160748, July 14, 2004, 434 SCRA 534.

[126] Id. at 541-542. Underscoring supplied.

[127] Bravo-Guerrero v. Bravo, supra note 36 at 257-258. Underscoring supplied. See also Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr., supra note 59, where the Court held that "the failure of Sergia Hernandez to file with the courts an action for annulment of the contract during the marriage and within ten (10) years from the transaction necessarily barred her from questioning the sale of the subject property to third persons."

[128] Heirs of Christina Ayuste v. Court of Appeals, supra note 72 at 500.

[129] Id. at 502. See also Eduard P. Caguioa, supra note 45 at 290. As likewise discussed by Justice Zalameda, Article 173 "should not be subject to interpretation insofar as the reckoning period of the exercise of the remedy as Article 173 is clear and categorical. Also, despite the seeming unfairness of the situation, the Court cannot engage in judicial legislation by moving the reckoning period to another time, say from the wife's knowledge or discovery of the transaction."

[130] Id.

[131] 1987 CONSTITUTION, Art. II, Sec. 14 states:

Section 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of men and women. See also Sec. 2 of R.A. 7192 which provides:

Sec. 2. Declaration of Policy. — The State recognizes the role of women in nation building and shall ensure the fundamental equality before the law of women and men. The State shall provided women rights and opportunities equal to that of men. To attain the foregoing policy:

(1) A substantial portion of official development assistance funds received from foreign governments and multilateral agencies and organizations shall be set aside and utilized by the agencies concerned to support programs and activities for women;

(2) All government departments shall ensure that women benefit equally and participate directly in the development programs and projects of said department, specifically those funded under official foreign development assistance, to ensure the full participation and involvement of women in the development process; and

(3) All government departments and agencies shall review and revise all their regulations, circulars, issuances and procedures to remove gender bias therein.

CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur.

Pursuant to Article 166, in relation to Article 173 of the New Civil Code, contracts entered into by the husband involving the alienation or encumbrance of real property belonging to the conjugal property without the wife's consent are not null and void but are merely voidable or annulable.

To be sure, Articles 166 and 173 of the New Civil Code respectively read:

Article 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.

Article 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband.

Case law instructs that "[a] void or inexistent contract may be defined as one which lacks, absolutely either in fact or in law, one or some of the elements which are essential for its validity. It is one which has no force and effect from the very beginning, as if it had never been entered into; it produces no effect whatsoever either against or in favor of anyone. Quod nullum est nullum producit effectum.[1] Article 1409 of the New Civil Code explicitly states that void contracts also cannot be ratified; neither can the right to set up the defense of illegality be waived." [2] As such, an action for the declaration of nullity of contract is imprescriptible.[3]

On the other hand, a voidable contract is one where consent is vitiated by lack of legal capacity of one of the contracting parties, or by mistake, violence, intimidation, undue influence, or fraud. It is valid until annulled. Otherwise stated, a voidable contract is binding on all the contracting parties – meaning that it produces legal

effects – until the same is annulled and set aside by a court of law.[4]

Article 166 of the New Civil Code should be read in conjunction with Article 173 of the same Code which provides for a remedy in favor of the wife of the husband who alienates or encumbers a real property belonging to the conjugal partnership without the former's consent. In particular:

Article 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband.

As stated above, the wife's remedy to seek the annulment of a contract whereby a husband alienates or encumbers real property belonging to the conjugal partnership without the wife's consent may only be availed of "during the marriage and within ten [10] years from the transaction questioned." To my mind, the time-bound nature of the remedy under Article 173 (in contrast to an imprescriptible remedy to assail void contracts) demonstrates the contract's voidable character since if an action is not timely instituted within the period provided, the contracting parties' rights and obligations arising from the same, albeit entered into in violation of Article 166 of the New Civil Code, will remain valid and binding. Indeed, the possibility of recognizing the rights and obligations under a contract not assailed within the provided prescriptive period is conceptually incompatible with the nature of a void contract, whereby no legal rights and obligations may be recognized regardless of whatever period has passed.

Moreover, it is well to point out that under Article 173, "[the non-consenting wife] or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband." The legal recompense accorded under this provision is based on the value of the property alienated by the husband. Should the contract of alienation entered in violation of Article 166 be considered null and void, then the law should not have provided for an alternative recompense to the wife which is based on the value of the property subject of such alienation. By allowing the wife to demand the value of property fraudulently alienated by the husband, the contract entered into by the husband and the third-party buyer subsists, which feature is, once more, incompatible with the nature of a contract that is null and void.

At this juncture, it is well to stress that the characterization of an Article 166 contract is limited to marriages celebrated during the effectivity of the New Civil Code provisions on the property relations between spouses,[5] i.e., from August 30, 1950 to August 2, 1988. As for marriages celebrated from August 3, 1988 onwards - or during the effectivity of the Family Code – such contracts are explicitly deemed void ab initio, pursuant to Articles 96[6] and 124[7] of the Family Code.

In this case, the records show that the marriage between the husband, Eulalio Cueno (Eulalio), and the wife, Flora Bonifacio Cueno (Flora), was celebrated during the effectivity of the New Civil Code, and that they acquired the subject property in the 1960s. As such, the questioned sale of the subject property falls within the purview of Articles 166 and 173 of the New Civil Code. Since the questioned sale occurred in the 1960s and Flora only filed a complaint in 2008, it is clear that she failed to seek the annulment of the questioned sale entered into by Eulalio within the ten (10)-year period provided for under Article 173 of the same Code. Pursuant thereto, Flora's right of action is already barred by the statute of limitations, and her only remedy is to demand the value of the property alienated by Eulalio after the dissolution of their marriage. Again, the contract, albeit entered into by Eulalio with the buyer, Isidro Bonifacio, in violation of Article 166, remains valid and binding, which therefore negates the conclusion that the same is a void contract.

ACCORDINGLY, I vote to DENY the petition.

[1] "That which is a nullity produces no effect." (Spouses Tan v. Bantegui, 510 Phil. 434, 447 (2005), citing Ballentine, Law Dictionary with Pronunciations [1948], p. 1077)

[2] Fullido v. Grilli, 781 Phil. 840, 852-853 (2016); citations omitted.

[3] Leonardo v. Court of Appeals, 481 Phil. 520, 538 (2004), citing Article 1410 of the Civil Code.

[4] See *id.*; citations omitted.

[5] See Articles 118 to 215, Title VI, Book I of the New Civil Code.

[6] Article 96 of the Family Code reads:

Art. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (Emphasis and underscoring supplied)

[7] Article 124 of the Family Code reads:

Art. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (Emphasis and underscoring supplied)

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