



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**RAQUEL ESTIPONA\*  
 (LELANDLORD E. STO.  
 DOMINGO\*\*) and SPS. ALBERTO  
 CO and LULU CO,**

**G.R. No. 207407\*\*\*\***

Petitioners,

Present:

- versus -

**GESMUNDO, C.J., Chairperson,  
 CAGUIOA,  
 LAZARO-JAVIER,  
 M. LOPEZ, and  
 J. LOPEZ, JJ.**

**ESTATE OF ANACLETO  
 AQUINO and LORNA FE  
 ESPINOSA,\*\*\* Administratrix of  
 the Estate of Anacleto Aquino,  
 Respondents.**

Promulgated:

**SEP 29 2021**

[Signature]

X-----X

**RESOLUTION**

**CAGUIOA, J.:**

Before the Court is a petition for review on *certiorari*<sup>1</sup> (Petition) under Rule 45 of the Rules of Court (Rules) assailing the Decision<sup>2</sup> dated August 15, 2012 of the Court of Appeals<sup>3</sup> (CA) in CA-G.R. CV No. 89818, which

- \* "Raquel" also appears as "Racquel" and "Rachel" and "Estipona" also appears as "Estepona" in some parts of the *rollo*.
- \*\* The Petition alleges that Lelandlord E. Sto. Domingo "acquired whatever shares and/or interests in the Estate of Anacleto Aquino by virtue of the Deed of Assignment of Interest and Rights executed by Raquel Estipona x x x dated March 19, 2010, x x x a copy of the Deed of Assignment of Interest and Rights [is attached] and marked as ANNEX 'A'," *rollo*, p. 9. No motion for substitution was, however, filed.
- \*\*\* Also appears as "Lorna Espinosa" and "Lorna Fe E. Jose" in some parts of the *rollo*. Stated as "Teresita Espinosa" in the title of the Petition and "Compliance and Reply to the Comment on the Petition," *rollo*, pp. 8 and 94 but see page 2 of the Petition, *id.* at 9. See also *rollo*, pp. 22, 37, 75, 80, 85 and 88.
- \*\*\*\* The title of this case appears in the Petition as "*Re: In the Matter for the Petition to Approve the Will of Anacleto Aquino With Prayer for Appointment of Special Administrator, Victor Espinosa, petitioner; Raquel Estipona (Lelandlord E. Sto. Domingo) and Sps. Alberto Co and Lulu Co, petitioners, versus Estate of Anacleto Aquino and Teresita Espinosa, Administratrix of the Estate of Anacleto Aquino, respondents;*" and in the Court's Resolutions as "*Re: In the Matter of the Petition to Approve the Will of Anacleto Aquino with Prayer for Appointment of Special Administrator; Victor Espinosa, Raquel Estipona [Lelandlord E. Sto. Domingo] and Sps. Alberto and Lulu Co vs. Estate of Anacleto and Teresita Espinosa, Administratrix of the Estate of Anacleto Aquino.*"

<sup>1</sup> *Rollo*, pp. 8-18, excluding Annexes.

<sup>2</sup> *Id.* at 22-34. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Noel G. Tijam (a retired Member of the Court) and Romeo F. Barza concurring.

<sup>3</sup> Seventh (7<sup>th</sup>) Division.

[Signature]

dismissed the appeal filed by spouses Alberto and Lulu Co (spouses Co) and Lelandlord E. Sto. Domingo (collectively, petitioners), as assignee of Raquel Estipona (Raquel) pursuant to a Deed of Assignment of Interest and Rights<sup>4</sup> dated March 19, 2010, and affirmed the Order dated April 23, 2007 of the Regional Trial Court of Manila, Branch 7 (probate court) in Special Proceedings No. 97-83384. The Petition also assails the CA Resolution<sup>5</sup> dated June 3, 2013 denying the motion for reconsideration filed by Raquel and spouses Co.

### *The Facts*

The CA Decision narrates the antecedents as follows:

Decedent Anacleto Aquino died on April 26, 1997 leaving a last will and testament dated February 8, 1997. On May 16, 1997, a certain Victor L. Espinosa, as petitioner, filed a petition for the probate of the decedent's will with the Regional Trial Court in Manila which was docketed as Special Proceeding No. 97-83384 and raffled to Branch 7 of the said court. The probate court approved decedent's Huling Habilin at Pagpapasya through its Decision dated August 25, 1997. Petitioner Victor L. Espinosa was appointed administrator of the estate of the decedent who thereafter submitted an inventory of the estate dated May 23, 2000. Among the real properties he included in the inventory is a property located at No. 632, 632A and 634 E. Quintos Street, Sampaloc, Manila covered by Transfer Certificate of Title No. 212562 as Lot 45, Block 22 containing an area of 150 square meters more or less, under a 66.6% (2/3) ownership interest of the estate, over which three (3) fully depreciated two (2)-storey apartment units made up of semi-concrete and wood materials are erected. On the same day, the probate court issued an order finding such accounting not in accordance with the accounting required by law. It then gave Victor Espinosa ten (10) days from said date within which to submit a correct and detailed inventory and accounting of all the properties of the estate received by him and all the expenses that he made supported with necessary documents, vouchers and receipts. He failed to comply with the said order.

On July 6, 2000, the probate court issued an Order removing Victor Espinosa as administrator of the estate of the decedent. On May 31, 2001, Lorna Fe Espinosa filed a motion to appoint her as special administrator in lieu of Victor Espinosa which was granted through the probate court's Order dated November 12, 2002.

On February 11, 2004, Raquel Estipona and Spouses Alberto Co and Lulu Co filed with the probate court their Claims Against the Estate of Anacleto Aquino with Prayer for Writ of Preliminary Injunction. They alleged therein that before his death, Anacleto Aquino obtained two (2) loans: one from claimants Spouses Rafael and Raquel Estipona in the amount of P300,000.00 Philippine Currency and another from Spouses Jessie and Roselyn Cacanando also in the amount of P300,000.00 Philippine Currency which he used to pay his loan with the Rodriguez Rural Bank, Inc. located at Plaza Rizal, Pasig City in the amount of P500,000.00 Philippine Currency. As security for the two loans, Anacleto Aquino executed a Real

<sup>4</sup> *Rollo*, pp. 19-20.

<sup>5</sup> *Id.* at 37-38.

Estate Mortgage dated November 15, 1996 in favor of Spouses Rafael and Raquel Estipona and Spouses Jessie and Roselyn Cacanando covering Apartment Unit No. 632 located at E. Quintos St., Sampaloc, Manila covered by TCT No. 212562. The Real Estate Mortgage contained a provision that in the event that Anacleto Aquino opts to sell the said property, the same shall first be offered to the mortgagees at the price of P800,000.00 Philippine Currency per apartment unit. The real estate mortgage was annotated in TCT No. 212562 on November 20, 1996.

The claimants alleged that on March 26, 1997, Anacleto Aquino orally informed Raquel Estipona about his option to sell to her on installment basis this apartment in the total amount of P800,000.00 Philippine Currency in accordance with the provision of the Real Estate Mortgage. Raquel Estipona agreed to buy the property provided that the loan amount of P300,000.00 Philippine Currency be deducted from the purchase price. On the same day, Raquel Estipona paid the amount of P20,000.00 Philippine Currency. Successive payments by Raquel Estipona were made through the issuance of various checks in the name of Anacleto Aquino. All in all, total payments made by Raquel Estipona for the purchase of the apartment amounted to P544,000.00 Philippine Currency, which includes the loan amount of P300,000.00 Philippine Currency, leaving merely a balance of P256,000.00 Philippine Currency which Raquel Estipona is willing to pay to the estate of Anacleto Aquino.

It was likewise alleged that on February 21, 1997, Anacleto Aquino sold to Spouses Rafael and [Raquel] Estipona, on installment basis, Apartment Unit No. 632-A which is a portion of the lot covered by TCT No. 212562 with an area of fifty (50) square meters, as shown in the Sale of Real Estate on Installment Basis dated February 21, 1997. Upon its execution, Spouses Rafael and Raquel Estipona paid the sum of P200,000.00 Philippine Currency. The remaining balance of P600,000.00 Philippine Currency was paid by Spouses Rafael and Raquel Estipona to Victor Espinosa, the court-appointed administrator, through UCPB Check No. 0282512 dated October 23, 1997. Thereafter, Raquel Estipona occupied the aforesaid apartment and later on sold the unit to Spouses Alberto and Lulu Co in the amount of P800,000.00 as shown in the Extrajudicial Settlement of Estate With Absolute Deed of Sale.

It turned out that Lorna Espinosa, as special administratrix of the estate of Anacleto Aquino, filed an unlawful detainer case against Raquel Estipona with respect to the subject apartment unit before the Metropolitan Trial Court of Manila, Branch 24, docketed as Civil Case No. 175627, and a forcible entry case against Spouses Alberto and Lulu Co which was raffled to Branch 29 of the same court and docketed as Civil Case No. 177096-CV.

In their claims against the estate, the claimants prayed for the following reliefs:

x x x

“WHEREFORE, premises considered, it is respectfully prayed that:

1. Upon filing of this instant claims against the estate of Anacleto Aquino, a TEMPORARY RESTRAINING ORDER be immediately issued by the court enjoining the Honorable Presiding Judge Jesusa S.

Prado-Maningas of the Metropolitan Trial Court of Manila, Branch 24 from issuing writ of execution and/or sheriff thereof from enforcing the writ of execution, if there is any; and Honorable Presiding Judge Gregorio B. Clemefia, Jr. of the Metropolitan Trial Court of Manila, Branch 29 from hearing the case of ejectment until the final judgment of the herein claims in order to preserve the status quo of the parties.

2. After hearing on the application, the Writ of Preliminary Injunction be issued during the pendency of the proceeding.

3. After due hearings, judgment be rendered in favor of the claimants by:

3.1. ORDERING administrator to execute the Absolute Deed of Sale with respect to one (1) Unit apartment denominated as No. 632-A E. Quintos St., Sampaloc, Manila with an area of FIFTY (50) square meters covered by Transfer Certificate of Title No. 212562, in favor of spouses Rafael and Raquel Estipona;

3.2[.] ORDERING the partition of one (1) Unit apartment denominated as No. 632-A E. Quintos St., Sampaloc, Manila with an area of FIFTY (50) square meters a portion of the estate of Anacleto Aquino under Transfer Certificate of Title No. 212562; AND ORDERING the release of the said apartment unit from the estate of Anacleto Aquino.

3.3[.] ORDERING Raquel Estipona to pay the remaining balance of the amount of P256,000 for the apartment [U]nit no. 632 to the administrator of the estate of Anacleto Aquino on the specific date, and upon payment thereof, TO ORDER the administrator of the estate to execute an Absolute Deed of Sale with respect to the apartment Unit No. 632 denominated as 632 E. Quintos St., Sampaloc, Manila with an area of FIFTY (50) square meters covered by Transfer Certificate of Title No. 212562, in favor of Raquel Estipona and TO RELEASE the apartment [U]nit from the estate of Anacleto Aquino.”

x x x

On March 8, 2004, the probate court issued an Order appointing Lorna Fe Espinosa as regular administrator, thereby revoking her previous appointment as special administrator.



After the claimants and the estate presented their respective evidence before the Branch Clerk of Court who was the appointed commissioner, both parties filed their formal offer of evidence.

On July 21, 2005, the administratrix Lorna Espinosa filed an Urgent Motion for Early Approvals of the Project Partition for the Estate and the Agreement submitted by Teresita Espinosa and Lorna Espinosa which was approved by the probate court through its Order dated July 26, 2005. The distribution/partition of the estate includes the three (3) door apartment which is the subject matter of the claims of herein claimants which were devised to the decedent's four (4) grandchildren, namely Jessica E. Jose, John Benedict E. Jose, Albert John Espinosa and Francis John Espinosa.

On August 5, 2005, claimants-appellants through counsel filed a Motion for Early Resolution of their claim and opposition and comment for the early approvals of the project of partition of the estate. On October 24, 2005, claimants also filed a Motion for Partial Reconsideration of the Order dated July 26, 2005 seeking to exclude from the distribution and partition the two apartment units 632 and 632-A which were the subject matters of their claims.

On April 23, 2007, the probate court issued the assailed order denying their claims, ruling that:

x x x

“After a consideration of the same, it appears that all such claims are geared towards the power of general jurisdiction of this Court. They seek to enforce provisions of a Real Estate Mortgage or that of a sale of property on installment with the objective of inevitably excluding such properties from the inventory of the estate. Necessarily, such issues call for a determination of ownership by consolidating the titles of such real estate in favor of the mortgagees or the claimants herein.

“It is hapless, however, that the matter of consolidating the ownership of a mortgaged property in favor of the mortgagee thereof cannot be determined in these proceedings, being purely probate in character.”

x x x

“The respective claims of Raquel Estipona, Spouses Alberto and Lulu Co and Spouses Jessie and Roselyn Cacanando are beyond the authority of this probate Court to determine.

“Such claims cannot be categorized as simple money claims that can easily (sic) recognized by the estate. In truth, they seek to claim title to or right of possession over the properties covered by TCT No. 212562 that is adverse to that of the deceased.

“It is fundamental that only money claims can be presented in Court in a testate proceeding. By money claims



is meant 'money, debt or interest thereon' as defined under Section 1, Rule 87 of the Revised Rules of Court.

“Verily, in seeking to enforce their claim of ownership over the properties covered by TCT No. 212562, the probate powers of this Court are being pushed to the limit.”

X X X

Claimants filed a Motion for Reconsideration thereto dated June 8, 2007, but the same was denied by the probate court through its Order dated July 3, 2007.

Hence, [the] appeal [to the CA].<sup>6</sup>

### *Ruling of the CA*

The CA in its Decision<sup>7</sup> dated August 15, 2012 dismissed the appeal. The dispositive portion states:

**WHEREFORE**, premises considered, the appeal is hereby **DISMISSED**. The Order dated April 23, 2007 issued by the Regional Trial Court in Manila, Branch 7, in Special Proceedings No. 97-83384 is **AFFIRMED**.

**SO ORDERED**.<sup>8</sup>

The CA ruled that since there existed a controversy over the alleged sale involving two apartment units (632 and 632A) by Anacleto Aquino (Anacleto) prior to his death, the proper remedy for Raquel and spouses Co (claimants) to enforce their claims over the said units is to file a separate ordinary action against the administrator of the estate pursuant to Section 1, Rule 87 of the Rules, invoking therein the general jurisdiction of the court.<sup>9</sup> The CA added that no matter how they insist upon their claims, whether meritorious or not, with the probate court, they cannot achieve what they seek because the probate court is limited by its special and limited jurisdiction.<sup>10</sup>

The motion for reconsideration of claimants, having been denied by the CA in its Resolution<sup>11</sup> dated June 3, 2013, petitioners<sup>12</sup> filed the instant Petition. Respondents filed a “Comment on the Petition”<sup>13</sup> dated July 1, 2014. Petitioners filed a Reply<sup>14</sup> dated March 6, 2015.

<sup>6</sup> Id. at 23-28.

<sup>7</sup> Supra note 2.

<sup>8</sup> Id. at 33.

<sup>9</sup> Id. at 31, 33.

<sup>10</sup> Id. at 32, 33.

<sup>11</sup> Supra note 5.

<sup>12</sup> Lelandlord Sto. Domingo, claiming to be one of the petitioners, by virtue of the Deed of Assignment of Interest and Rights (Annex “A” to the Petition, id. at 19-20) in lieu of Raquel Estipona.

<sup>13</sup> *Rollo*, pp. 80-84.

<sup>14</sup> Id. at 94-100.

### Issues

The Petition essentially raises the following issues:

Whether the claims of petitioners are money claims pursuant to Section 5, Rule 86 of the Rules, over which the probate court has jurisdiction;

Whether the sale of apartment unit 632A in installment is a conveyance of realty covered by Section 8, Rule 89 of the Rules; and

Whether the Dead Man's Statute (Section 23, Rule 130 of the Rules) barred Raquel from testifying on the option to sell unit 632 orally communicated by Anacleto to her.

### The Court's Ruling

The Petition is partly meritorious.

To recall, Anacleto died on **April 26, 1997**, leaving a will dated **February 8, 1997**.<sup>15</sup> As alleged in the petition filed before the probate court by Lorna Fe Espinosa, in her capacity as duly appointed administrator of the estate of Anacleto, the probate court approved the will of Anacleto by virtue of its Decision dated August 25, 1997, which ordered that the estate, real and personal property of the testator, be distributed in accordance with the will.<sup>16</sup> In the will, the three-door apartment, which includes the two apartment units that are the subject matter of the claims of petitioners, was devised to Anacleto's four grandchildren: Jessica E. Jose, John Benedict E. Jose, Albert John Espinosa and Francis John Espinosa.<sup>17</sup>

The two claims at issue consist of the following:

(1) a loan of ₱600,000.00, which Anacleto obtained from spouses Rafael and Raquel Estipona (spouses Estipona) and spouses Jessie and Roselyn Cacanando (spouses Cacanando) (collectively, mortgagees) that is covered by a "Real Estate Mortgage"<sup>18</sup> (REM) executed on **November 20, 1996** over 100 square meters portion of the parcel of land together with the two apartment units, which the mortgagees were then occupying, situated at Sampaloc, Manila and which parcel of land is more particularly described and bounded in Transfer Certificate of Title No. (TCT) 212562.

The terms of the REM are:

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<sup>15</sup> Id. at 23.

<sup>16</sup> Id. at 54.

<sup>17</sup> Id. at 27.

<sup>18</sup> Annex "E" to the Petition, id. at 44-46.



a. The mortgagor is given one-year period to commence upon signing of the REM to pay the loan renewable for the same period of time under the same terms and conditions.

b. The mortgagees who are now in possession of the property by way of interest to the money loaned to the mortgagor shall pay a reduced rental from ₱4,000.00 to ₱2,000.00 a month to commence upon signing of the REM.

c. The mortgagees waive their right to foreclose the mortgaged property in accordance with law in case the mortgagor failed to pay the said obligation. In the event that the mortgagor opts to sell the said property, the same shall first be offered to the mortgagees at the price of ₱800,000.00 per apartment unit who shall signify their acceptance in writing within 30 days from notice thereof, before the said property could be offered by the mortgagor to third person.<sup>19</sup>

(2) a sale of “a parcel of land situated at Sampaloc, Manila, with an area of FIFTY (50) square meters, more or less, together with improvements thereon to wit: an apartment unit designated as 632 E. Quintos Street, Sampaloc, Manila, which parcel of land is a portion of that property registered in [Anacleto’s] name under (TCT)] 212562”<sup>20</sup> which is evidenced by a deed of “Sale of Real Estate on Installment”<sup>21</sup> (SREI) with Anacleto as the vendor and Rafael Estipona, married to Raquel Estipona, as the vendee and notarized on **February 21, 1997**.

The terms of the SREI are:

a. Total consideration is ₱800,000.00 payable in 2 installments: first installment of ₱200,000.00 to be paid upon the signing of the SREI, and second installment of ₱600,000.00 to be paid **on or before April 30, 1997**.

b. “[T]itle to the subject property shall, automatically and without further formality, pass to and be transferred to the **VENDEE upon payment of the full purchase price as above stipulated.**”<sup>22</sup>

### ***The loan secured by the REM***

Regarding the ₱600,000.00 loan secured by the REM, petitioners posit that it is a money claim which is allowed to be filed against the estate of Anacleto pursuant to Section 5, Rule 86 of the Rules.

<sup>19</sup> Id. at 45.

<sup>20</sup> Id. at 41.

<sup>21</sup> Annex “F” to the Petition, id. at 41-43.

<sup>22</sup> Id. at 41-42. Emphasis supplied.



Section 5, Rule 86 on “Claims Against Estate” provides:

SEC. 5. *Claims which must be filed under notice. If not filed, barred; exceptions.* – All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. Where an executor or administrator commences an action, or prosecutes an action already commenced by the deceased in his lifetime, the debtor may set forth by answer the claims he has against the decedent, instead of presenting them independently to the court as herein provided, and mutual claims may be set off against each other in such action; and if final judgment is rendered in favor of the defendant, the amount so determined shall be considered the true balance against the estate, as though the claim had been presented directly before the court in the administration proceedings. Claims not yet due, or contingent, may be approved at their present value.

According to Section 1, Rule 87 of the Rules, a “money claim” is any claim for “money or debt or interest thereon.” As used in some statutes relating to the allowance and payment of claims against a decedent’s estate, the term “claims” include every species of liability which an executor or administrator can be called on to pay or provide for payment out of the general fund of the estate or refer to such debts or demands against the decedent as might have been enforced against him/her in his/her lifetime by personal actions for the recovery of money, and on which only a money judgment could have been rendered.<sup>23</sup>

The loan secured by the REM is clearly a money claim against Anacleto’s estate. According to the REM, Anacleto, the mortgagor, received ₱600,000.00 from the mortgagees and was given a one-year period from the signing of the REM on November 15, 1996, renewable for the same period of time, to pay the said loan.<sup>24</sup> This is definitely a *mutuum*. As defined under Article 1933 of the Civil Code, a *mutuum* is a contract of loan where money or other consumable thing is delivered by one of the parties (creditor) to another (debtor) upon the condition that the same amount of the same kind and quality shall be paid and, as such, is undoubtedly included in term “debt”.

Apparently, of the ₱600,000.00 borrowed by Anacleto, ₱300,000.00 came from spouses Estipona and the other ₱300,000.00 came from spouses Cacanando.<sup>25</sup> Since there are two creditors, the loan of Anacleto to the

<sup>23</sup> Vicente J. Francisco, THE REVISED RULES OF COURT IN THE PHILIPPINES, SPECIAL PROCEEDINGS, VOL. V-B, RULES 78-109 (LETTERS TESTAMENTARY AND ADMINISTRATION TO APPEALS IN SPECIAL PROCEEDINGS) ANNOTATED AND COMMENTED (1973 ed.), p.181, citing 34 C.J.S. 95: “As used in statutes requiring the presentation of claims against a decedent’s estate, the word ‘claims’ is generally construed to mean debts or demands of a pecuniary nature which could have been enforced against the deceased in his lifetime and could have been reduced to simple contract.”

<sup>24</sup> *Rollo*, pp. 44, 45.

<sup>25</sup> *Id.* at 24, 50.

mortgagees is a joint obligation and is divided into two equal shares as there are two creditors who lent equal amounts with each debt or credit being distinct from one another.<sup>26</sup>

The “Compliance (Submission of Inventory)”<sup>27</sup> dated May 23, 2000 prepared by Victor Espinosa, former administrator of Anacleto’s estate, and filed with the probate court, correctly reflected as a liability of the estate the ₱600,000.00 as “Mortgage Payable.”<sup>28</sup>

The CA justified the denial of the “money claims” of petitioners on the ground that what they seek is “the exclusion of certain real properties from the estate of the decedent and the consequent transfer of ownership thereof to their names.”<sup>29</sup> This observation may apply to spouses Estipona’s share in the ₱600,000.00 loan secured by the REM but this is not true with respect to the share of spouses Cacanando.

It will be recalled that petitioners alleged that on March 26, 1997, Anacleto orally informed Raquel about his option to sell to her the apartment unit 632<sup>30</sup> which was mortgaged to her for ₱800,000.00 under the REM and Raquel agreed to buy the same provided that the ₱300,000.00, which Anacleto borrowed from her, be deducted from the purchase price.<sup>31</sup> On the same day, Raquel allegedly paid ₱20,000.00 and successive payments were made through the issuance of various checks in the name of Anacleto, resulting in the total payments amounting to ₱544,000.00 and leaving a balance of ₱256,000.00, which Raquel is willing to pay to Anacleto’s estate.<sup>32</sup> Thus, Raquel claims ownership over unit 632 while there is no such claim being made by spouses Cacanando with respect to unit 634.<sup>33</sup>

As will be discussed in relation to the third issue, the claim of ownership by Raquel over unit 632 is being questioned by petitioners themselves as being violative of the Dead Man’s Statute.

While there may be a genuine issue on the validity and enforceability of the sale in favor of Raquel over unit 632, the credit of ₱300,000.00 in favor of spouses Estipona should still be reflected as a “money claim” against Anacleto’s estate but subject to the resolution of the ownership issue. The credit of ₱300,000.00 in favor of spouses Cacanando should likewise remain as a “money claim” against Anacleto’s estate.

<sup>26</sup> See CIVIL CODE, Arts. 1207 and 1208.

<sup>27</sup> *Rollo*, pp. 48-52.

<sup>28</sup> *Id.* at 51.

<sup>29</sup> *Id.* at 29.

<sup>30</sup> Pursuant to the “Compliance (Submission of Inventory)”, *id.* at 50.

<sup>31</sup> *Id.* at 24.

<sup>32</sup> *Id.* at 24-25.

<sup>33</sup> Pursuant to the “Compliance (Submission of Inventory)”, *id.* at 50.



In *Union Bank of the Philippines v. Santibañez*,<sup>34</sup> where the promissory notes and continuing guaranty in issue were executed by decedent Efraim Santibañez and his son, Edmund, the Court noted that petitioner therein should have filed its money claim with the probate court in accordance with Section 5, Rule 86 and explained:

The filing of a money claim against the decedent's estate in the probate court is mandatory.<sup>35</sup> As we held in the vintage case of *Py Eng Chong v. Herrera*:<sup>36</sup>

x x x This requirement is for the purpose of protecting the estate of the deceased by informing the executor or administrator of the claims against it, thus enabling him to examine each claim and to determine whether it is a proper one which should be allowed. The plain and obvious design of the rule is the speedy settlement of the affairs of the deceased and the early delivery of the property to the distributees, legatees, or heirs. The law strictly requires the prompt presentation and disposition of the claims against the decedent's estate in order to settle the affairs of the estate as soon as possible, pay off its debts and distribute the residue.<sup>37</sup>

Since petitioner therein failed to file its money claim with the probate court, at most, it could go after Edmund as the co-maker of the decedent in the promissory notes and continuing guaranty, subject to any defenses which Edmund might have against said petitioner.<sup>38</sup>

To avoid the money claims of petitioners herein from being barred forever pursuant to Section 5, Rule 86, they should be allowed to be filed against the estate of Anacleto.

Since unit 632 has been devised in Anacleto's will, the probate court is minded that the applicable provision is Article 934 of the Civil Code, to wit:

ART. 934. If the testator should bequeath or devise something pledged or mortgaged to secure a recoverable debt before the execution of the will, the estate is obliged to pay the debt, unless the contrary intention appears.

The same rule applies when the thing is pledged or mortgaged after the execution of the will.

Any other charge, perpetual or temporary, with which the thing bequeathed is burdened, passes with it to the legatee or devisee. (867a)

<sup>34</sup> G.R. No. 149926, February 23, 2005, 452 SCRA 228.

<sup>35</sup> Citing *De Bautista v. De Guzman*, No. L-28298, November 25, 1983, 125 SCRA 676.

<sup>36</sup> No. L-31229, March 25, 1976, 70 SCRA 130.

<sup>37</sup> *Union Bank of the Philippines v. Santibañez*, supra note 34, at 240-241, citing *Py Eng Chong v. Herrera*, id. at 135.

<sup>38</sup> Id. at 241.

The REM securing the ₱600,000.00 loan was executed on November 15, 1996<sup>39</sup> while Anacleto's will was executed on February 8, 1997.<sup>40</sup> Since Anacleto devised in his will unit 632, which had been mortgaged prior to the execution of his will, his estate is obliged to pay the debt, unless a contrary intention appears.

### *The SREI covering unit 632A*

Regarding the sale covered by the SREI, petitioners argue that it is a conveyance of realty which Anacleto contracted to convey and is covered by Section 8, Rule 89 of the Rules.

Section 8, Rule 89 on "Sales, Mortgages, and Other Encumbrances of Property of Decedent" provides:

SEC. 8. *When court may authorize conveyance of realty which deceased contracted to convey. Notice. Effect of deed.* – Where the deceased was in his lifetime under contract, binding in law, to deed real property, or an interest therein, the court having jurisdiction of the estate may, on application for that purpose, authorize the executor or administrator to convey such property according to such contract, or with such modifications as are agreed upon by the parties and approved by the court; and if the contract is to convey real property to the executor or administrator, the clerk of court shall execute the deed. The deed executed by such executor, administrator, or clerk of court shall be as effectual to convey the property as if executed by the deceased in his lifetime; but no such conveyance shall be authorized until notice of the application for that purpose has been given personally or by mail to all persons interested, and such further notice has been given, by publication or otherwise, as the court deems proper; nor if the assets in the hands of the executor or administrator will thereby be reduced so as to prevent a creditor from receiving his full debt or diminish his dividend.

While the SREI merely designates the apartment unit subject thereof as unit "632,"<sup>41</sup> the "Compliance (Submission of Inventory)" reflects apartment unit "632A" as the correct object of the sale on installment.<sup>42</sup>

Raquel issued the check payment of the ₱600,000.00 balance of the purchase price of ₱800,000.00 stated in the SREI to be payable "on or before April 30, 1997"<sup>43</sup> on October 23, 1997<sup>44</sup> in the name of Victor Espinosa<sup>45</sup> as the administrator of the estate of Anacleto.

<sup>39</sup> *Rollo*, pp. 44, 45.

<sup>40</sup> *Id.* at 23.

<sup>41</sup> *Id.* at 41.

<sup>42</sup> *Id.* at 51.

<sup>43</sup> *Id.* at 41.

<sup>44</sup> *Id.* at 55.

<sup>45</sup> See photocopy of the check issued in the name of Victor Espinosa (Annex "G" to the Petition) and Receipt issued by Victor Espinosa (Annex "H" to the Petition), *id.* at 47.



Lorna Fe Espinosa, the administrator who was appointed after Victor Espinosa, questions the validity of the payment of the balance on the ground that it was late or 173 days after April 30, 1997; it was in the form of a check payable to Victor Espinosa and not Anacleto's estate; it was not approved by the probate court in violation of Section 8, Rule 89 of the Rules and Section 91 of the Property Registration Decree (Presidential Decree No. 1529); and the devisees of unit 632A did not approve of the payment of the ₱600,000.00.<sup>46</sup>

Since the administrator maintains that the sale never materialized during the lifetime of Anacleto and the counsel for the estate repeatedly denied the sale of the apartment units (632 and 632A) to spouses Estipona, the CA took the position that the two alleged conveyances made by Anacleto in favor of petitioners are not undisputed.<sup>47</sup> Thus, according to the CA, the recourse of petitioners is to enforce their claims of ownership in a separate ordinary action, invoking the general jurisdiction of the court for no matter how they insist upon their claims with the probate court, whether such claims are meritorious or not, they cannot achieve what they seek as the probate court is limited by its special jurisdiction.<sup>48</sup>

Section 8, Rule 89 covers a contract executed by or entered into by the deceased during his/her lifetime, binding in law, wherein real property or an interest therein was "deeded" therein.<sup>49</sup> The said Section requires that (1) the contract must be binding in law; (2) it was entered into by the decedent during his/her lifetime; and (3) its object is real property or any interest therein. If the contract conforms with these requisites, an application may be made before the court having jurisdiction of the estate to "authorize the executor or administrator to convey such property according to such contract, or with such modifications as are agreed upon by the parties and approved by the court."<sup>50</sup>

The Court is mindful of the limited jurisdiction of the probate court. In a special proceeding for the probate of a will, as in this case, the issue, as a general rule, is restricted to the extrinsic or formal validity of the will, *i.e.*, whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law.<sup>51</sup> As a rule, the issue of ownership is an extraneous matter which the probate court cannot resolve with finality.<sup>52</sup> Thus, for the purpose of determining whether a certain property should or should not be included in the inventory of the estate properties, the probate court may pass upon the title and ownership thereto, but such

<sup>46</sup> *Rollo*, pp. 55-56.

<sup>47</sup> See *id.* at 29-31.

<sup>48</sup> *Id.* at 33.

<sup>49</sup> RULES OF COURT, Rule 89, Sec. 8 provides: "Where the deceased was in his lifetime under contract, binding in law, to deed real property, or an interest therein x x x." (Emphasis supplied)

<sup>50</sup> *Id.*, Rule 89, Sec. 8.

<sup>51</sup> See *Pastor, Jr. v. Court of Appeals*, No. L-56340, June 24, 1983, 122 SCRA 885, 895, citing RULES OF COURT, Rule 75, Sec. 1 and Rule 76, Sec. 9.

<sup>52</sup> *Id.* at 895.

determination is provisional, not conclusive, and is subject to the final decision in a separate action to resolve title and ownership.<sup>53</sup>

Given the limited jurisdiction of the probate court, the Court will now **provisionally** determine the validity of the purported sale of unit 632A under the SREI.

In *Nabus v. Pacson*<sup>54</sup> (*Nabus*), the Court was confronted with the issue of whether the Deed of Conditional Sale, which provided that “as soon as the full consideration of this sale has been paid by the [vendee], the corresponding transfer documents shall be executed by the [vendor] to the [vendee] for the portion sold”<sup>55</sup> was a contract to sell or a contract of sale. The Court extensively discussed the distinctions between a contract of sale and a contract to sell, *viz.*:

A contract of sale is defined in Article 1458 of the Civil Code, thus:

“Art. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional.”

*Ramos v. Heruela*<sup>56</sup> differentiates a contract of absolute sale and a contract of conditional sale as follows:

“Article 1458 of the Civil Code provides that a contract of sale may be absolute or conditional. A contract of sale is absolute when title to the property passes to the vendee upon delivery of the thing sold. A deed of sale is absolute when there is no stipulation in the contract that title to the property remains with the seller until full payment of the purchase price. The sale is also absolute if there is no stipulation giving the vendor the right to cancel unilaterally the contract the moment the vendee fails to pay within a fixed period. In a conditional sale, as in a contract to sell, ownership remains with the vendor and does not pass to the vendee until full payment of the purchase price. The full payment of the purchase price partakes of a suspensive condition, and non-fulfillment of the condition prevents the obligation to sell from arising.”<sup>57</sup>

*Coronel v. Court of Appeals*<sup>58</sup> distinguished a contract to sell from a contract of sale, thus:

<sup>53</sup> Id., citing 3 Moran, COMMENTS ON THE RULES OF COURT (1980 ed.), p. 458; *Valero Vda. De Rodriguez v. Court of Appeals*, No. L-39532, July 20, 1979, 91 SCRA 540.

<sup>54</sup> G.R. No. 161318, November 25, 2009, 605 SCRA 334.

<sup>55</sup> Id. at 345.

<sup>56</sup> G.R. No. 145330, October 14, 2005, 473 SCRA 79.

<sup>57</sup> Citing *Ramos v. Heruela*, id. at 86.

<sup>58</sup> 331 Phil. 294 (1996).



“Sale, by its very nature, is a consensual contract because it is perfected by mere consent. The essential elements of a contract of sale are the following:

- a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price;
- b) Determinate subject matter; and
- c) Price certain in money or its equivalent.

Under this definition, a Contract *to Sell* may not be considered as a Contract *of Sale* because the first essential element is lacking. **In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfil[l]ment of which prevents the obligation to sell from arising and, thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.**

x x x x

Stated positively, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, the prospective seller's obligation to sell the subject property by entering into a contract of sale with the prospective buyer becomes demandable as provided in Article 1479 of the Civil Code which states:

Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

A contract to sell may thus be defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.



A contract to sell as defined hereinabove, may not even be considered as a conditional contract of sale where the seller may likewise reserve title to the property subject of the sale until the fulfillment of a suspensive condition, because in a conditional contract of sale, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated. However, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller.

**In a contract to sell, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.”<sup>59</sup>**

Further, *Chua v. Court of Appeals*<sup>60</sup> cited this distinction between a contract of sale and a contract to sell:

“In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a contract to sell, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.”<sup>61</sup>

The Court held in *Nabus* that the Deed of Conditional Sale was a contract to sell and the non-payment of the agreed purchase price **prevented the obligation of the vendor to convey title from acquiring binding force, viz.:**

It is not the title of the contract, but its express terms or stipulations that determine the kind of contract entered into by the parties. In this case, the contract entitled “Deed of Conditional Sale” is actually a contract to sell. The contract stipulated that ***“as soon as the full consideration of the sale has been paid by the vendee, the corresponding transfer documents shall***

<sup>59</sup> Citing *Coronel v. Court of Appeals*, id. at 308-311. Emphasis in the original; citations omitted.

<sup>60</sup> 449 Phil. 25 (2003).

<sup>61</sup> *Nabus v. Pacson*, supra note 54, at 349-351, citing *Chua v. Court of Appeals*, id. at 41-42, further citing *Salazar v. Court of Appeals*, G.R. No. 118203, July 5, 1996, 258 SCRA 317.

*be executed by the vendor to the vendee for the portion sold.*<sup>62</sup> Where the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell.<sup>63</sup> The aforesaid stipulation shows that the vendors reserved title to the subject property until full payment of the purchase price.

If respondents paid the Spouses Nabus in accordance with the stipulations in the Deed of Conditional Sale, the consideration would have been fully paid in June 1983. Thus, during the last week of January 1984, Julie Nabus approached Joaquin Pacson to ask for the full payment of the lot. Joaquin Pacson agreed to pay, but told her to return after four days as his daughter, Catalina Pacson, would have to go over the numerous receipts to determine the balance to be paid.

When Julie Nabus returned after four days, Joaquin Pacson sent Julie Nabus and his daughter, Catalina, to Atty. Elizabeth Rillera for the execution of the deed of sale. Since Bate Nabus had already died, and was survived by Julie and their minor daughter, Atty. Rillera required Julie Nabus to return in four days with the necessary documents such as the deed of extrajudicial settlement, the transfer certificate of title in the names of Julie Nabus and minor Michelle Nabus, and the guardianship papers of Michelle. However, Julie Nabus did not return.

As vendees given possession of the subject property, the ownership of which was still with the vendors, the Pacsons should have protected their interest and inquired from Julie Nabus why she did not return and then followed through with the full payment of the purchase price and the execution of the deed of absolute sale. The Spouses Pacson had the legal remedy of consigning their payment to the court; however, they did not do so. x x x

x x x x

Unfortunately for the Spouses Pacson, since the Deed of Conditional Sale executed in their favor was merely a contract to sell, the obligation of the seller to sell becomes demandable only upon the happening of the suspensive condition.<sup>64</sup> The full payment of the purchase price is the positive suspensive condition, **the failure of which is not a breach of contract, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force.**<sup>65</sup> Thus, for its non-fulfillment, there is no contract to speak of, the obligor having failed to perform the suspensive condition which enforces a juridical relation.<sup>66</sup> With this circumstance, there can be no rescission or fulfillment of an obligation that is still non-existent, the suspensive condition not having occurred as yet.<sup>67</sup> Emphasis should be made that the breach contemplated in Article 1191 of the New Civil Code is the obligor's failure to comply with an obligation already extant, not a failure of a condition to render binding that obligation.<sup>68</sup>

<sup>62</sup> Emphasis in the original.

<sup>63</sup> Citing *Ver Reyes v. Salvador, Sr.*, G.R. Nos. 139047 & 139365, September 11, 2008, 564 SCRA 456, 479-480.

<sup>64</sup> Citing *Chua v. Court of Appeals*, supra note 60.

<sup>65</sup> Citing *Heirs of Pedro Escanlar v. Court of Appeals*, G.R. No. 119777, October 23, 1997, 281 SCRA 176, 188. Emphasis in the original.

<sup>66</sup> Citing *Cheng v. Genato*, 360 Phil. 891, 904-905 (1998).

<sup>67</sup> Citing *Cheng v. Genato*, id. at 905.

<sup>68</sup> Citing *Cheng v. Genato*, id.

The trial court, therefore, erred in applying Article 1191 of the Civil Code<sup>69</sup> in this case by ordering fulfillment of the obligation, that is, the execution of the deed of absolute sale in favor of the Spouses Pacson upon full payment of the purchase price, which decision was affirmed by the Court of Appeals. *Ayala Life [Assurance], Inc. v. Ray Burton Development Corporation*<sup>70</sup> held:

“Evidently, before the remedy of specific performance may be availed of, there must be a **breach** of the contract.

Under a contract to sell, the title of the thing to be sold is retained by the seller until the purchaser makes full payment of the agreed purchase price. Such payment is a positive suspensive condition, the non-fulfillment of which is **not a breach of contract** but merely an event that prevents the seller from conveying title to the purchaser. The non-payment of the purchase price renders the contract to sell ineffective and without force and effect. Thus, a cause of action for specific performance does not arise.”<sup>71</sup>

Since the contract to sell was without force and effect, Julie Nabus **validly** conveyed the subject property to another buyer, petitioner Betty Tolero, through a contract of absolute sale, and on the strength thereof, new transfer certificates of title over the subject property were duly issued to Tolero.<sup>72</sup> (Emphasis and underscoring in the original)

Indeed, current jurisprudence upholds the rule that an agreement involving the sale of a realty where the title or ownership is retained by the owner-seller until full payment of the purchase price by the buyer as a conditional contract or contract to sell wherein the full payment is a positive suspensive condition.<sup>73</sup> This is evident from the *en banc* resolution/decisions in *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*,<sup>74</sup> *Visayan Sawmill Co., Inc. v. Court of Appeals*,<sup>75</sup> and *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*<sup>76</sup>

<sup>69</sup> Citation omitted.

<sup>70</sup> G.R. No. 163075, January 23, 2006, 479 SCRA 462.

<sup>71</sup> Citing *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*, *id.* at 469. Emphasis in the original.

<sup>72</sup> *Nabus v. Pacson*, *supra* note 54, at 352-355, citing *Ver Reyes v. Salvador, Sr.*, *supra* note 63.

<sup>73</sup> It is noted, however, that pursuant to Article 1458 of the Civil Code, a contract of sale is a reciprocal obligation to give; and the prestation of the seller or vendor is “to transfer the ownership of and to deliver a determinate thing” while the prestation of the buyer or vendee is “to pay therefor a price certain in money or its equivalent.” The full payment of the purchase price is the buyer’s prestation and may not be a condition as defined in Article 1179 of the Civil Code, which provides: “Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is demandable at once.” If it is a condition because it refers to an act which will happen in the future and the full payment or payment in installment on the stipulated date or dates may or may not happen, thus, uncertain, then the fulfillment by the buyer of this positive suspensive condition may be solely dependent upon his/her will since it may depend on the buyer whether he/she will pay or not. Article 1182 of the Civil Code provides: “When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. x x x” On the other hand, under Article 1180 of the Civil Code, “[w]hen the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period.”

<sup>74</sup> No. L-25885, August 18, 1972, 46 SCRA 381.

<sup>75</sup> G.R. No. 83851, March 3, 1993, 219 SCRA 378.

<sup>76</sup> G.R. No. 106063, November 21, 1996, 264 SCRA 483.

Since full payment of the purchase price is presently considered by jurisprudence a positive suspensive condition on the prestation of the seller to transfer ownership of the property to be sold, recalling certain principles on conditional obligations will be helpful.

Conditional obligations are governed by Article 1181 of the Civil Code, which provides: "In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition."

This article classifies conditions into suspensive and resolutive conditions where the former is called in Anglo-Saxon Law, conditions precedent and the latter, conditions subsequent.<sup>77</sup> Suspensive conditions or initial conditions, as Castan calls them, are those on which depend the birth of the obligation whereas conditions subsequent or final conditions, as Castan calls them, are those on which depend the extinction of the obligation.<sup>78</sup>

As to the effect of a suspensive condition, the happening thereof gives rise to the obligation; and the obligation is not demandable till the happening of the event which constitutes the condition in such a way that effectiveness of the obligation and the acquisition of the rights are made to depend upon the fulfillment of the condition.<sup>79</sup>

In other words, when the obligation depends upon a suspensive condition, which is a future or uncertain event upon the fulfillment of which the obligation becomes effective, the acquisition of rights by the obligee or creditor is subordinated to the fulfillment of that condition.<sup>80</sup> The birth or effectivity of the obligation is suspended until the happening or fulfillment of the event which constitutes the condition.<sup>81</sup>

As Justice J.B.L. Reyes put it in the early case of *Gaite v. Fonacier*:<sup>82</sup>

x x x What characterizes a conditional obligation is the fact that its efficacy or obligatory force (as distinguished from its demandability) is subordinated to the happening of a future and uncertain event; so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. x x x<sup>83</sup>

Viewed from the foregoing, the SREI which provides that: "title to the subject property shall, automatically and without further formality, pass to and

<sup>77</sup> Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES, Vol. IV (1983 Rev. 2<sup>nd</sup> Ed.), p. 149.

<sup>78</sup> Id., citing 3 Castan, 8<sup>th</sup> ed., p. 126.

<sup>79</sup> Id. at 149-150.

<sup>80</sup> Desiderio P. Jurado, COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS (1987 Ninth Rev. Ed.), p. 100.

<sup>81</sup> Id.

<sup>82</sup> No. L-11827, July 31, 1961, 2 SCRA 830.

<sup>83</sup> Id. at 836.

be transferred to the VENDEE upon payment of the full purchase price as above stipulated [with the second and final installment of ₱600,000.00 to be paid on or before April 30, 1997]<sup>84</sup> is a conditional sale or a contract to sell. The title to the subject property (unit 632A) was withheld by Anacleto until full payment of the purchase price. The payment of the full purchase price of ₱800,000.00 on the stipulated date was the positive suspensive condition that should have been fulfilled before the obligation of Anacleto or his heirs to transfer ownership of unit 632A to spouses Estipona could arise.

Was the suspensive condition fulfilled when Raquel paid the ₱600,000.00 balance of the purchase price on October 23, 1997<sup>85</sup> or 173 days counted from April 30, 1997 in the form of a check payable to Victor Espinosa and not Anacleto's estate without the approval of his heirs and the probate court?

The Court observed in *Cabrera v. Ysaac*:<sup>86</sup>

For the sale of immovable property, the following provision governs its rescission:

Article 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by notarial act. After the demand, the court may not grant him a new term.

This provision contemplates (1) a *contract of sale* of an immovable property and (2) a stipulation in the contract that failure to pay the price at the time agreed upon will cause the rescission of the contract. The vendee or the buyer can still pay even after the time agreed upon, if the agreement between the parties has these requisites. This right of the vendee to pay ceases when the vendor or the seller demands the rescission of the contract judicially or extrajudicially. In case of an extrajudicial demand to rescind the contract, it should be notarized.

Hence, this provision does not apply if it is not a contract of sale of an immovable property and merely a *contract to sell* an immovable property. A contract to sell is "where the ownership or title is retained by the seller and is not to pass until the full payment of the price, such payment being a positive suspensive condition and failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force."<sup>87</sup>

In a similar case entitled *Manuel v. Rodriguez[, Sr.]*,<sup>88</sup> Eusebio Manuel offered to buy the land owned by Payatas Subdivision, Inc. x x x

<sup>84</sup> *Rollo*, pp. 41-42.

<sup>85</sup> *Id.* at 55.

<sup>86</sup> G.R. No. 166790, November 19, 2014, 740 SCRA 612.

<sup>87</sup> Citing *Roque v. Lapuz*, 185 Phil. 525, 540 (1980).

<sup>88</sup> Citing 109 Phil. 1 (1960).

An initial payment was made, and a final payment was to be made nine (9) to ten (10) months later. Manuel never paid for the latter installment; hence, Eulogio Rodriguez[, Sr., the Secretary-Treasurer of Payatas Subdivision, Inc.,] cancelled their agreement and sold the land to someone else.

In *Manuel*, this court categorically stated that Article 1592 “does not apply to a contract to sell or promise to sell, where title remains with the vendor until fulfillment to a positive suspensive condition, such as full payment of the price.”<sup>89</sup> This court upheld that the contract to sell was validly canceled through the nonpayment of Eusebio Manuel. The same conclusion applies in this case.

The law does not prescribe a form to rescind a contract to sell immovable property. In *Manuel*, the nonpayment operated to cancel the contract. If mere nonpayment is enough to cancel a contract to sell, the letter given to petitioner’s lawyer is also an acceptable form of rescinding the contract. The law does not require notarization for a letter to rescind a *contract to sell* immovable property. Notarization is only required if a *contract of sale* is being rescinded.<sup>90</sup>

Since Article 1592 of the Civil Code where the vendee may pay, even after the expiration of the period agreed upon, as long as no demand for rescission of the contract has been made judicially or by a notarial act, is not applicable to a contract to sell or a promise to sell, the non-payment of Raquel of the balance of the purchase price on or before April 30, 1997 as stipulated in the SREI signaled the non-fulfillment of the suspensive condition and rendered without obligatory force or effect the SREI. The payment of the purchase price beyond the expiration of the stipulated period is allowed only in the sale of immovable property and not in a contract or promise to sell, over the objection of the vendor or his/her heirs.

Raquel was not without any remedy despite the death of Anacleto before April 30, 1997. She could have tendered the payment of the ₱600,000.00 balance of the purchase price and effected its consignation pursuant to Article 1256 of the Civil Code, which provides:

ART. 1256. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due.

Consignation alone shall produce the same effect in the following cases:

- (1) When the creditor is absent or unknown, or does not appear at the place of payment;
- (2) When he is incapacitated to receive the payment at the time it is due;
- (3) When without just cause, he refuses to give a receipt;

<sup>89</sup> Citing *Manuel v. Rodriguez, Sr.*, id. at 9.

<sup>90</sup> *Cabrera v. Ysaac*, supra note 86, at 635-636.



(4) When two or more persons claim the same right to collect;

(5) When the title of the obligation has been lost. (1176a)

Raquel could have enforced the SREI against the heirs of Anacleto pursuant to Article 1311 of the Civil Code, which provides:

ART. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

x x x x

Construing this Article, the Court in *DKC Holdings Corp. v. Court of Appeals*<sup>91</sup> observed:

The general rule, therefore, is that heirs are bound by contracts entered into by their predecessors-in-interest except when the rights and obligations arising therefrom are not transmissible by (1) their nature, (2) stipulation or (3) provision of law.

In the case at bar, there is neither contractual stipulation nor legal provision making the rights and obligations under the contract intransmissible. More importantly, the nature of the rights and obligations therein are, by their nature, transmissible.

The nature of intransmissible rights as explained by Arturo Tolentino, an eminent civilist, is as follows:

“Among contracts which are intransmissible are those which are purely personal, either by provision of law, such as in cases of partnerships and agency, or by the very nature of the obligations arising therefrom, such as those requiring special personal qualifications of the obligor. It may also be stated that contracts for the payment of money debts are not transmitted to the heirs of a party, but constitute a charge against his estate. Thus, where the client in a contract for professional services of a lawyer died, leaving minor heirs, and the lawyer, instead of presenting his claim for professional services under the contract to the probate court, substituted the minors as parties for his client, it was held that the contract could not be enforced against the minors; the lawyer was limited to a recovery on the basis of *quantum meruit*.”<sup>92</sup>

In American jurisprudence, “(W)here acts stipulated in a contract require the exercise of special knowledge, genius, skill, taste, ability, experience, judgment, discretion, integrity, or other personal qualification

<sup>91</sup> G.R. No. 118248, April 5, 2000, 329 SCRA 666.

<sup>92</sup> Citing Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Vol. IV (1986), p. 430.



of one or both parties, the agreement is of a personal nature, and terminates on the death of the party who is required to render such service."<sup>93</sup>

It has also been held that a good measure for determining whether a contract terminates upon the death of one of the parties is whether it is of such a character that it may be performed by the promissor's personal representative. Contracts to perform personal acts which cannot be as well performed by others are discharged by the death of the promissor. Conversely, where the service or act is of such a character that it may as well be performed by another, or where the contract, by its terms, shows that performance by others was contemplated, death does not terminate the contract or excuse nonperformance.<sup>94</sup>

In the case at bar, there is no personal act required from the late Encarnacion Bartolome. Rather, the obligation of Encarnacion in the contract to deliver possession of the subject property to petitioner upon the exercise by the latter of its option to lease the same may very well be performed by her heir Victor.

x x x In 1952, it was ruled that if the predecessor was duty-bound to reconvey land to another, and at his death the reconveyance had not been made, the heirs can be compelled to execute the proper deed for reconveyance. This was grounded upon the principle that heirs cannot escape the legal consequence of a transaction entered into by their predecessor-in-interest because they have inherited the property subject to the liability affecting their common ancestor.<sup>95</sup>

x x x x

In the case at bar, the subject matter of the contract is likewise a lease, which is a property right. The death of a party does not excuse nonperformance of a contract which involves a property right, and the rights and obligations thereunder pass to the personal representatives of the deceased. Similarly, nonperformance is not excused by the death of the party when the other party has a property interest in the subject matter of the contract.<sup>96</sup>

Under both Article 1311 of the Civil Code and jurisprudence, therefore, Victor is bound by the subject Contract of Lease with Option to Buy.<sup>97</sup>

In the present case, what Raquel acquired upon the constitution of the SREL, being an obligation subject to a suspensive condition, was only a mere hope or expectancy.<sup>98</sup> But, pursuant to Article 1188 of the Civil Code, "[t]he creditor may, before the fulfillment of the condition, bring the appropriate actions for the preservation of his right." In case of the fulfillment of the suspensive condition, which was the full payment of the purchase price, the

<sup>93</sup> Citing *Kanawha Banking & Trust Co. v. Gilbert*, 46 S.E. 2d 225, 131 W. Va. 88; *Rowe v. Compensation Research Bureau, Inc.*, 62 N.W. 2d 581, 265 Wis. 589; *Fressil v. Nichols*, 114 So. 431, 94 Fla. 403; *Cutler v. United Shoe Manufacturing Corporation*, 174 N.E. 507, 274 Mass. 341, cited in 17A C.J.S. Sec. 465.

<sup>94</sup> Citing 17 Am. Jur. 2d, Sec. 413, p. 866.

<sup>95</sup> Citing *Carrillo v. Salak de Paz*, 91 Phil. 265 (1952).

<sup>96</sup> Citing 17A C.J.S. Sec. 465, p. 627.

<sup>97</sup> *DKC Holdings Corp. v. Court of Appeals*, supra note 91, at 672-675.

<sup>98</sup> See *Desiderio P. Jurado*, supra note 80, at 101.

right that would have been vested was clearly a property right; and the obligation of the vendor, Anacleto, to transfer ownership to the buyer, Raquel, involved a patrimonial obligation, which was definitely transmissible.

Since the SREI never attained obligatory force or did not become binding by virtue of the non-payment of the purchase price as stipulated, the first requisite for the application of Section 8, Rule 89 — the contract must be “binding in law” — is absent. Thus, the probate court could not have authorized the administrator to execute a deed of absolute sale over unit 632A in favor of spouses Estipona. Since the ₱600,000.00 paid by Raquel to Victor Espinosa is acknowledged in the “Compliance (Submission of Inventory)” as having been received by the estate of Anacleto, the latter should be obligated to return the same in case the SREI is subsequently determined with finality in the appropriate proceeding to be without obligatory force. As well, the claim of spouses Co with respect to unit 632A pursuant to the Extrajudicial Settlement of Estate with Absolute Deed of Sale, which purportedly transferred ownership thereof to them from spouses Estipona, will have to be settled in the said appropriate proceeding.

The probate court is minded to determine the effect of the SREI on the devise of unit 632A. The SREI was notarized on **February 21, 1997**<sup>99</sup> while Anacleto’s will was executed on **February 8, 1997**.<sup>100</sup>

Article 957 of the Civil Code provides the revocation *de facto* or revocation by operation of law<sup>101</sup> of legacies and devises, to wit:

ART. 957. The legacy or devise shall be without effect:

(1) If the testator transforms the thing bequeathed in such a manner that it does not retain either the form or the denomination it had;

(2) If the testator by any title or for any cause alienates the thing bequeathed or any part thereof, it being understood that in the latter case the legacy or devise shall be without effect only with respect to the part thus alienated. If after the alienation the thing should again belong to the testator, even if it be by reason of nullity of the contract, the legacy or devise shall not thereafter be valid, unless the reacquisition shall have been effected by virtue of the exercise of the right of repurchase;

(3) If the thing bequeathed is totally lost during the lifetime of the testator, or after his death without the heir’s fault. Nevertheless, the person obliged to pay the legacy or devise shall be liable for eviction if the thing bequeathed should not have been determinate as to its kind, in accordance with the provisions of Article 928.<sup>102</sup> (869a)

<sup>99</sup> Annex “F” to the Petition, *rollo*, pp. 41-43.

<sup>100</sup> *Id.* at 23.

<sup>101</sup> Article 830 of the Civil Code provides that a will may be revoked by “implication of law.”

<sup>102</sup> ART. 928. The heir who is bound to deliver the legacy or devise shall be liable in case of eviction, if the thing is indeterminate and is indicated only by its kind. (860)



Pursuant to Article 957, one of the instances of revocation *de facto* of a legacy or devise is the alienation by the testator by any title of the thing bequeathed subsequent to the execution of the will. There might be here an intention on the part of Anacleto to alienate through the SREI unit 632A subsequent to the execution of his will although it subsequently became inefficacious, or without obligatory force, by reason of the nonfulfillment of the positive suspensive condition of full payment of the purchase price by spouses Estipona on the stipulated date.

### *The option to sell unit 632*

As to the purported option to sell unit 632 effected orally by Anacleto to Raquel prior to his death, petitioners argue regarding the third issue that the Dead Man's Statute (Section 23, Rule 130 of the Rules) barred Raquel from testifying thereon. **Again, the determination of the Court on this issue is provisional given the limited jurisdiction of the probate court.**

Section 23, Rule 130 on "Rules of Admissibility" of the Rules provides:

SEC. 23. *Disqualification by reason of death or insanity of adverse party.* – Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.

The reasons for the said rule are that: if death has closed the lips of one party, the policy of the law is to close the lips of the other;<sup>103</sup> and the temptation to falsehood and concealment in such cases is considered too great to allow the surviving party to testify on his/her own behalf.<sup>104</sup>

In *Tan v. Court of Appeals*<sup>105</sup> (*Tan*), the private respondent therein relied simply on the allegation that he was entitled to the properties subject of the case by virtue of a sale between him and Alejandro Tan Keh who was already dead.<sup>106</sup> The Court observed in *Tan* that obviously, private respondent would rely on parol evidence which, under the circumstances obtaining, could not be allowed without violating the Dead Man's Statute in Section 23, Rule 130 of the Rules.<sup>107</sup> The Court restated:

The object and purpose of the rule is to guard against the temptation to give false testimony in regard of the transaction in question on the part

<sup>103</sup> Manuel V. Moran, COMMENTS ON THE RULES OF COURT, updated and enlarged by Ramon O. Nolasco, Vol. V (1980 ed.), p. 158, citing *Maxilom v. Tabotabo*, 9 Phil. 390 (1907).

<sup>104</sup> *Id.*, citing *Owens v. Owens*, 14 W. Va. 88, 95.

<sup>105</sup> G.R. No. 125861, September 9, 1998, 295 SCRA 247.

<sup>106</sup> *Id.* at 257-258.

<sup>107</sup> *Id.* at 258.

of the surviving party, and further to put the two parties to a suit upon terms of equality in regard to the opportunity to giving testimony. If one party to the alleged transaction is precluded from testifying by death, insanity, or other mental disabilities, the other party is not entitled to the undue advantage of giving his own uncontradicted and unexplained account of the transaction.<sup>108</sup>

The elements or requisites of the survivorship disqualification rule or the Dead Man's Statute are: (1) the defendant in the case is the executor or administrator or a representative of the deceased or the person of unsound mind; (2) the suit<sup>109</sup> is upon a claim by the plaintiff against the estate of said deceased person or person of unsound mind; (3) the witness is the plaintiff, or an assignor of that party, or a person in whose behalf the case is prosecuted; and (4) the subject of the testimony is as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.<sup>110</sup>

All the above requisites are present in this case. Raquel, who is the witness, is claiming against the estate of Anacleto based on the alleged exercise by the latter of his option to sell under the REM before his death. Thus, petitioners are correct that Raquel is incompetent and disqualified to testify on such matter and barred by reason of the Dead Man's Statute.

With the exclusion of Raquel's testimony, her claim of ownership over the apartment unit 632 will have to fail absent other convincing and competent evidence to prove the purported oral sale of unit 632 to her and to overcome the Statute of Frauds under Article 1403(2)(e) of the Civil Code, wherein an agreement for the sale of real property or of an interest therein must be in writing to be enforceable. With the provisional determination that the sale of unit 632 is invalid, the "successive payments" made by Raquel "through the issuance of various checks in the name of Anacleto"<sup>111</sup> will have to be included as money claims against Anacleto's estate pursuant to Section 5, Rule 86 of the Rules.

### *Final Note*

As a final note, the Court stresses that these findings in this case — (1) the SREI (with respect to unit 632A) being without obligatory force and (2) Raquel being barred from testifying on the purported option to sell unit 632 effected orally by Anacleto to her prior to his death to prove the existence and validity of the sale of the said unit to Raquel — are merely provisional, given the limited jurisdiction of the probate court to determine the issue of

<sup>108</sup> Id., citing Ricardo J. Francisco, EVIDENCE (3<sup>rd</sup> Ed., 1996), p. 133, further citing *McCarthy v. Wallstone*, 210 App. Div. 152, 205; *Goñi v. Court of Appeals*, No. L-27434, September 23, 1986, 144 SCRA 222.

<sup>109</sup> A civil case or a special proceeding over the estate of a deceased or insane person. Willard B. Riano, EVIDENCE (THE BAR LECTURES SERIES) (2013), p. 307, citing Regalado, REMEDIAL LAW COMPENDIUM, Vol. II (2008), p. 743.

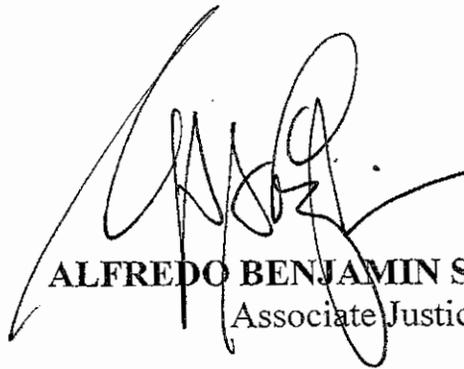
<sup>110</sup> Willard B. Riano, id. at 307-308, citing RULES OF COURT, Rule 130, Sec. 23.

<sup>111</sup> *Rollo*, p. 24.

ownership. This adjudication is not a final and binding determination of the issue of ownership with respect to units 632 and 632A. As such, this is not a bar for the parties or even third persons to file the appropriate action so that the issue of ownership can be determined with finality.<sup>112</sup>

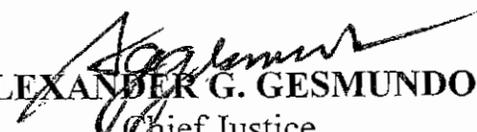
**WHEREFORE**, the Petition is **PARTIALLY GRANTED**. The Decision dated August 15, 2012 and Resolution dated June 3, 2013 of the Court of Appeals in CA-G.R. CV No. 89818 as well as the Order dated April 23, 2007 of the Regional Trial Court of Manila, Branch 7 in Special Proceedings No. 97-83384 are **REVERSED** and **SET ASIDE**. The ₱600,000.00 loan, which decedent Anacleto Aquino obtained from spouses Rafael and Raquel Estipona and spouses Jessie J. and Roselyn Cacanando and secured by the Real Estate Mortgage notarized on November 20, 1996, the payments made in relation to unit 632 in the name of decedent Anacleto Aquino by Raquel Estipona, and the payments made by spouses Rafael and Raquel Estipona in relation to unit 632A are **RECOGNIZED** as claims for money against the testate estate of Anacleto Aquino under Section 5, Rule 86 of the Rules of Court. The Sale of Real Estate on Installment notarized on February 21, 1997 between Anacleto Aquino and Rafael Estipona, married to Raquel Estipona, is provisionally **DECLARED** to be without any obligatory force, and the oral sale over unit 632 between Anacleto Aquino and spouses Rafael and Raquel Estipona is provisionally **DECLARED** to be invalid. These declarations are without prejudice to the filing of the appropriate action with the proper court so that the validity and effects thereof can be settled with finality.

**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

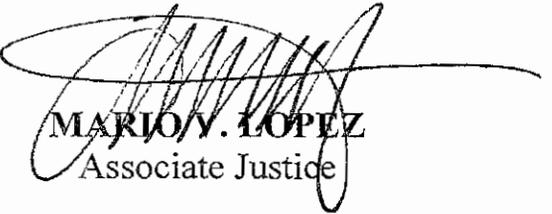
WE CONCUR:



**ALEXANDER G. GESMUNDO**  
Chief Justice  
Chairperson

<sup>112</sup> See *Supapo v. Sps. De Jesus*, 758 Phil. 444, 467 (2015).

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**MARIO V. LOPEZ**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

