

This is precisely the situation now. Section 306 of the National Internal Revenue Code provides that for an action for the refund of taxes to prosper, the two-year period must be reckoned from the date of payment, regardless of any supervening cause that may arise. Accordingly, we may ask ourselves the following questions:

1. The Statute of Limitation embodies an important public policy consideration in that it stimulates activity and punishes negligence. Can negligence be conclusively presumed in case a supervening cause, which gave rise to a right to refund, occurs after the expiration of the two-year period?

2. A prescriptive period must be reasonable in that an aggrieved party must have been given ample time within which to institute the necessary action. Is this requirement complied with in the event a supervening cause occurs after the expiration of the two-year period from the date of payment?

3. The Statute of Limitation is intended to safeguard against fraud and oppression. Is this protection given by Section 306?

The answers to these questions will explain why Section 306 of the National Internal Revenue Code embodies a novel concept of prescription.

THE INAPPLICABILITY OF RESOLUTION TO A CONTRACT TO SELL

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Resolution is the power to cancel obligations implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.¹ The Civil Code establishing this right in article 1191 inaccurately uses the term "rescission" instead of the original "resolucion" used in article 1124 of the Spanish Civil Code of which the present provision is an imprecise reproduction. Article 1592 of the Civil Code, which is a mere variant of the general principle embodied in article 1191,² duplicates this terminological, and conceptual inexactitude, departing from its forerunner article numbered 1504 of the Spanish Civil Code, "La resolucion de la obligacion" was constituted in Chapter III under Title I on obligations of Book IV of the Spanish Civil Code, conceptually distinct and apart from "la rescision de los contratos" in the same Book but under Title II on contracts, Chapter V. Resolution is a principal action while rescission is subsidiary.³ Resolution is premised on breach of a reciprocal obligation dependent on a tacit resolutive condition. A breach is indecisive on the application of the remedy of rescission aimed at the reparation for damages caused to the contracting parties and third persons.⁴

As established in the Civil Code, resolution specifically contemplates a reciprocal obligation or synallagmatic contract defined as an obligation where each of the parties promises a prestation to the other and in return is promised by the other a corresponding prestation.⁵

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¹ Art. 1191, Civil Code.

² Gaboya v. Cui. 38 SCRA 85, 96-7, per Justice Sanchez.

³ Art. 1383, Civil Code IV Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines (1973 ed.) 169.

⁴ Aquino v. Tañedo, 39 Phil 517; IV Tolentino 536 citing 8 Manresa 748-9; Report of the Code Commission, p. 139.

⁵ IV Caguioa, Comments and Cases on Civil Law (1968 1st ed.) 126, citing 4 Part I, Puig Peña '95; Enneccerus, Kipp & Wolff, Tratado de Derecho Civil 194.

The reciprocal prestations arise from the same cause⁶ and are to be performed simultaneously so that the performance of one is conditioned upon the simultaneous fulfillment of the other.⁷ Under the express provision of the law a reciprocal obligation is subjected to an implied resolatory condition.⁸ The failure of one party to perform his part of the bilateral agreement gives the other the right to resolve it.

The Supreme Court of Spain, construing article 1124 of the Spanish Civil Code, the source of article 1191 of the Civil Code of the Philippines, expounded:

"Article 1124 of the Civil Code establishes the power to resolve reciprocal obligations in case one of the obligors does not comply with what is incumbent upon him, a faculty which, according to the jurisprudence of this Tribunal, arises immediately after the other party does not comply with his obligation, without the necessity of a previous declaration by the courts."⁹

"According to the reiterated doctrine of this Sala, article 1124 regulates resolution as a faculty attributed to the party prejudiced the noncompliance with the contract."¹⁰

"The resolution of synallagmatic contracts (is) founded on the noncompliance of one of the parties with his respective prestaton."¹¹

The inapplicability of resolution to a contract to sell has been settled by the Supreme Court through Justice J.B.L. Reyes in two leading decisions and a resolution on a motion for the reconsideration of the second.¹²

A contract to sell is not an ordinary absolute sale transferring ownership simultaneously with the delivery of the property sold, but one in which the vendor retains ownership of the object of the sale, merely undertaking to convey it provided the buyer strictly complies with the terms of the contract, such as the full and punctual payment of the balance of the purchase price. Upon failure of the buyer to pay the balance the seller may terminate the operation of the contract.¹³ If termination by the seller constitutes resolution then he has to satisfy the requisites of the remedy, among which are that the breach of the obligation must be serious and not merely casual¹⁴ and in the case of a sale of immovable property,

⁶ IV Tolentino 169 citing 8 Manresa 153; see also footnote 4.

⁷ Asturias Sugar Central, Inc. v. The Pure Cane Molasses Co., Inc., 60 Phil 255, 259.

⁸ Art. 1191, Civil Code.

⁹ TS, Sent. of 10 April 1929; 106 Jur. Civ. 897, quoted in University of the Philippines v. De los Angeles 35 SCRA 102, 108, per Justice J.B.L. Reyes (translation by this writer).

¹⁰ TS, Sent. of 16 November 1956; Jur. Aranzadi 3, 447, quoted in University of the Philippines, supra (translation by this writer).

¹¹ TS, Sents. of 4 November 1958 and 22 June 1959, quoted in University of the Philippines, supra (translation by this writer).

¹² Manuel v. Rodriguez, 109 Phil 1; Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc., 43 SCRA 93, 46 SCRA 381.

¹³ Luzon Stevedor ng, 43 SCRA 93, 104-5.

¹⁴ Universal Food Corp. v. Court of Appeals, 33 SCRA 1; Gregorio Arana, Inc. v. De Paterno, 91 Phil 786; Song Fo & Co. v. Hawaiian-Philippine Co., 47 Phil 821.

the demand for resolution must be made judicially or by a notarial act.¹⁵ However, the Supreme Court has repeatedly held that in a contract to sell the authority of the seller to terminate the operation of the contract is not resolution but specific performance. By terminating the contract the seller is enforcing it on its terms.

The glimmering of this paradoxical doctrine appeared in the case of Manuel v Rodriguez, supra, where the Supreme Court, through Justice J.B.L. Reyes, ruled that in contracts to sell where ownership is retained by the seller and is not to pass until the full payment of the price, such payment is a positive *suspensive* condition the failure of which is not a breach, casual or serious, but simply an event that prevents the obligation from acquiring binding force. To argue that there is only a casual breach is to proceed from the erroneous assumption that the contract is an absolute sale where non-payment is a *resolatory* condition. On this reason the Supreme Court held in the same case that the requirement of a demand by suit or notarial act when the vendor of realty wants to resolve does not apply to a contract to sell or promise to sell.

The next time the issue was presented to the Supreme Court was in the case of Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.¹⁶ The Court, again through Justice J. B. L. Reyes, held that it is irrelevant whether the infringement of the contract to sell is casual or serious, quoting as authority the case of Manuel v. Rodriguez, supra. Holding inapplicable article 1592 of the Civil Code requiring demand by suit or notarial act in resolution of sale of realty, the Supreme Court reasoned that the contract to sell is not the ordinary sale envisaged by said article, transferring ownership simultaneously with the delivery of the real property sold, but one in which the vendor retains ownership of the immovable object of the sale, merely undertaking to convey it provided the buyer strictly complies with the terms of the contract. In suing to recover possession of the object of the contract from the buyer, the seller is not after the resolution or setting aside of the contract and the restoration of the parties to the *status quo ante*, as contemplated by article 1592, but precisely *enforcing* the provisions of the agreement that he is no longer obligated to part with the ownership or possession of the property because the buyer has failed to comply with the specified condition precedent, which is to pay the installments as they fall due. The Court added that "The distinction between contracts of sale and contracts to sell with reserved title has been recognized by this Court in repeated decisions upholding the power of promissors under contracts to sell in case of failure of the other party to complete payment, to extrajudicially terminate the operation of the contract, refuse conveyance and retain the

¹⁵ Art. 1592, Civil Code; Villareal v. Tan King, 43 Phil 251.

¹⁶ 43 SCRA 93.

sums or installments already received, where such rights are expressly provided for, as in the case at bar."¹⁷

On motion for reconsideration of the ruling in the Luzon Brokerage case, the Supreme Court, still through Justice J. B. L. Reyes, established the doctrine beyond controversy, resolving that the insistence upon the application to the contract to sell of article 1191 of the Civil Code (tacit resolutive condition in reciprocal obligations) studiously ignores the fact that the seller's obligation to convey the property sold is expressly made subject to a suspensive (precedent) condition of the punctual and full payment of the balance of the purchase price.¹⁸ The said agreement of not transferring to the buyer the complete dominion of the thing until the complete payment of the price involves in essence a veritable suspensive condition.¹⁹ The vendor by reason of this reservation transfers only the enjoyment of the property conveyed while the price is not totally delivered.²⁰

The Court emphasized the express stipulations of the contract to sell which exemplify the dispositions in contracts of such nature. The provisions are that the vendor will execute and deliver to the vendee a definite and absolute deed of sale upon full payment by the vendee of the unpaid balance of the purchase price and that title to the properties subject of the contract remains with the vendor and will pass to and be transferred in the name of the vendee only upon the complete payment of the full price agreed upon. The Court said that the provisions of the contract make crystal clear that the full payment of the price (through the punctual performance of the installment payments) is a condition precedent to the execution of the final sale and to the transfer of the property from the vendor to the vendee; so that there is to be no actual sale until and unless full payment is made (In this case none was made). The result of all these stipulations is that in seeking the ouster of the vendee for failure to pay the price as agreed upon, the vendor is not *resolving* the contract but precisely *enforcing* it according to its express terms. In his suit the vendor is not seeking restitution to him of the ownership of the thing sold (since it has never been disposed of), such restoration being the logical consequence of the fulfillment of a *resolutive* condition, express or implied; neither is he seeking a declaration that his obligation to sell is extinguished. What he seeks is a judicial declaration that because the suspensive condition (full and punctual payment) has *not* been fulfilled, his obligation to sell *has never arisen or has never become effective* and therefore, he is entitled to re-

¹⁷ Id. at 104-5, citing a number of cases.

¹⁸ Luzon Stevedoring, 46 SCRA 381, 386.

¹⁹ TS Sent. of 11 March 1929, quoted in Luzon Stevedoring, supra. (translation by this writer).

²⁰ TS, Sent. of 6 March 1906, quoted in Luzon Stevedoring, supra, (translation by this writer).

sponses the property object of the contract, possession being a mere incident to his right of ownership.²¹ The Court quoted Castan stating that if the suspensive condition fails, the obligation does not come into existence and the creditor loses all rights, including the employment of protective measures²² such as retaining possession of the object of the contract for security. The corresponding thesis of this decision is that if the purchase price is fully and punctually paid, the obligation to sell arises and in that event resolution will apply provided the requisites are present; in that case a reciprocal obligation exists: the obligation to pay has been performed and the obligation to sell arises. The obligation to sell having arisen, the buyer can now demand the execution of the absolute deed of sale. Failure of the seller to do so gives the buyer the implied right to resolve the obligation.²³ If the absolute deed of sale is executed, resolution will also clearly apply as absolute sale is a reciprocal obligation.²⁴ But in the case of a contract to sell the promise to sell is subject to a suspensive condition (not a suspensive period) rendering all discussions about bilateral or reciprocal contracts and the application of legal provisions on resolutions of contractual obligation a pure academic exercise without applicability. The issue is whether the suspensive condition of paying the full purchase price is fulfilled or not. If as in this case the stipulated suspensive condition is left unaccomplished, resolution does not even become inchoate. For failure of the suspensive condition, the obligation to sell does not come to exist and no resolution can be made of an obligation as yet non-existent.²⁵ Resolution is as in-existent as the obligation itself.

The inapplicability of resolution to a contract to sell is not reciprocal. While the obligation to pay is pure, the obligation to sell under a suspensive condition. The condition is the full and punctual payment of the price. Before payment, the obligation to sell does not exist. Until the price is paid there is only one unreciprocated obligation and that is the obligation of the buyer to pay. And as stressed in transcendent decisions of the Supreme Court, the failure to pay the price prevents the birth of the obligation to sell and as resolution is death to an obligation death cannot come to an obligation which has never had life.

²¹ Luzon Stevedoring, 46 SCRA 381, 387, emphasis based on the original.

²² Castan, Derecho Civil, 7a Ed., 107, quoted in Luzon Stevedoring, supra (translation by this writer).

²³ Art. 1191, Civil Code.

²⁴ Bucoy v. Paulino, 23 SCRA 248, 271-2; Albea v. Inquimboy, 86 Phil 477, 483.

²⁵ Luzon Stevedoring, supra, at 388.