

**G.R. No. 220008 — SOCORRO T. CLEMENTE as substituted by SALVADOR T. CLEMENTE, petitioner, versus REPUBLIC OF THE PHILIPPINES (Department of Public Works and Highways, Region IV-A), respondent.**

Promulgated:

20 FEB 2019

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### CONCURRING OPINION

**CAGUIOA, J.:**

I concur with the *ponencia* that the Complaint<sup>1</sup> for Revocation of Donation, Reconveyance and Recovery of Possession should be granted. However, while the *ponencia* holds that the donation made by the Clemente Siblings was a donation subject to a resolutive condition and thus covered by Article 764 of the Civil Code, I find that no resolutive condition exists in this case.

The Deed of Donation expressly provided that it shall be “unconditional,” viz.:

That as an act of civic-mindedness, cooperation, liberality and generosity, the herein DONORS hereby voluntarily and freely give, transfer and convey, by way of unconditional donation, unto said DONEE, his executors and administrators, all of the rights, title and interest which the aforesaid DONORS have or which pertain to them and which they owned exclusively in the above-described real property over a one-hectar[e] portion of the same, solely for hospital site only and for no other else, where a Government Hospital shall be constructed, free from all liens and encumbrances whatsoever, which portion of the land had been segregated in the attached subdivision plan and more particularly described as follows[.]<sup>2</sup> (Underscoring supplied)

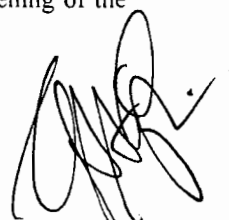
While I agree that the rights over the donated property are demandable at once, I disagree that the fulfillment, performance, or extinguishment<sup>3</sup> thereof depends upon “a future or uncertain event.”<sup>4</sup>

<sup>1</sup> *Rollo*, pp. 140-144. See also Amended Complaint, pp. 145-150.

<sup>2</sup> *Id.* at 152.

<sup>3</sup> Article 1181 of the Civil Code provides that “[i]n 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.”

<sup>4</sup> See CIVIL CODE, Art. 1179.



Rather, the construction of a government hospital as stated in the above-quoted provision is a mode, burden, or charge, the value of which was, presumably, at least equal to the value of the land donated.<sup>5</sup>

In line with the Court's pronouncements in *De Luna v. Judge Abrigo*,<sup>6</sup> *The Secretary of Education v. Heirs of Rufino Dulay, Sr.*<sup>7</sup> and *City of Manila v. Rizal Park Co.*,<sup>8</sup> the herein donation should be classified as an onerous donation that is governed by the rules on obligations and contracts<sup>9</sup> and the provisions on resolution of reciprocal obligations under Article 1191 of the Civil Code.<sup>10</sup>

Such classification is necessary for a more consistent application of 1) the rules on when the court is authorized to fix a period, and 2) the conflicting prescriptive periods under Articles 764 and 1144 of the Civil Code.

*a. Authority to Fix a Period*

The *ponencia* treats the donation as one subject to a "resolutive condition" as defined under Article 1179 on "Pure and Conditional Obligations."<sup>11</sup> I submit that the applicable provision is Article 1197 as this specifically applies to "Obligations with a Period."<sup>12</sup> Inasmuch as the donation here is not actually conditional, but rather, merely imposes a burden to construct a government hospital, then Article 1197 under the title of "Obligations with a Period" governs.

In full agreement with the *ponencia*, this is a situation where the courts should be allowed to fix a period. In other words, as the onerous donation imposed an obligation to construct a government hospital but failed to provide

<sup>5</sup> *De Luna v. Judge Abrigo*, 260 Phil. 157, 163 (1990), citing EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED, 11<sup>th</sup> ed., Vol. II, Art. 726 explains: "From the viewpoint of motive, purpose or cause, donations may be 1) simple, 2) remuneratory or 3) onerous. A simple donation is one the cause of which is pure liberality (no strings attached). A remuneratory donation is one where the donee gives something to reward past or future services or because of future charges or burdens, when the value of said services, burdens or charges is less than the value of the donation. An onerous donation is one which is subject to burdens, charges or future services equal (or more) in value than that of the thing donated."

<sup>6</sup> Id.

<sup>7</sup> 516 Phil. 244 (2006).

<sup>8</sup> 53 Phil. 515 (1929).

<sup>9</sup> Article 733 of the Civil Code provides: "Donations with an onerous cause shall be governed by the rules on contracts, and remuneratory donations by the provisions of the present Title as regards that portion which exceeds the value of the burden imposed."

<sup>10</sup> ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

<sup>11</sup> CIVIL CODE, Book IV, Chapter 3, Sec. 1.

<sup>12</sup> CIVIL CODE, Book IV, Chapter 3, Sec. 2.

a period for compliance, the court is authorized to fix a period for compliance under Article 1197 of the Civil Code, *viz.*:

ART. 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

The same conclusion may be arrived at by applying Article 1191, which authorizes the court to fix a period for “just cause” in lieu of rescission/resolution.<sup>13</sup>

*b. Prescriptive Period*

The *ponencia* likewise states that –

[a]n action for reconveyance based on a violation of a condition in a Deed of Donation should be instituted within ten (10) years from the time of such violation. Moreover, an action to revoke a donation based on non-compliance of the condition prescribes after four (4) years from such non-compliance.<sup>14</sup>

It is unclear, however, whether the 10-year or 4-year period applies in this case. I find that the 10-year period should apply. As already mentioned, the instant case involves an onerous donation which is expressly made subject to the rules on obligations and contracts.<sup>15</sup> Thus, the 10-year period under Article 1144(1) should be applied.<sup>16</sup>

In this regard, I agree with the *ponencia* that the action has not prescribed because there was no period provided for the government to comply with its obligation to construct a government hospital, which renders it impossible to determine when petitioner’s cause of action had accrued.

*c. Laches*

Finally, I agree that the action is also not barred by laches. In *Dept. of Education, Division of Albay v. Oñate*,<sup>17</sup> the Court held:

Laches is defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which—by the exercise of due diligence—could or should have been done earlier. Verily, laches serves to deprive a party guilty of it to any judicial remedies. Its elements are: (1) conduct on the part of the defendant, or of one under whom the defendant claims, giving rise to the situation which the complaint seeks a remedy; (2) delay in asserting the complainant’s rights, the complainant having had knowledge or notice of the defendant’s conduct as having been afforded

<sup>13</sup> See Article 1191, par. 3 which provides that “[t]he court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.”

<sup>14</sup> *Ponencia*, p. 9.

<sup>15</sup> CIVIL CODE, ART. 733.

<sup>16</sup> *De Luna v. Judge Abrigo*, supra note 5 at 166.

<sup>17</sup> 551 Phil. 633 (2007).



an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right in which the defendant bases the suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred.

In *Felix Gochan and Sons Realty Corporation*, we held that “[t]hough laches applies even to imprescriptible actions, its elements must be proved positively. **Laches is evidentiary in nature which could not be established by mere allegations in the pleadings** and can not be resolved in a motion to dismiss (emphases supplied).” In the same vein, we explained in *Santiago v. Court of Appeals* that there is “no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances.”<sup>18</sup> (Citations and underscoring omitted, emphasis supplied)

In said case, the Court held that laches had set in considering that: (1) the subject parcel had been continuously used as a public school since 1940 or for 52 years;<sup>19</sup> (2) no evidence was presented to show that the respondent therein or his predecessors-in-interest ever took any action to contest the occupation by the concerned municipality and later the Department of Education (DepEd) despite the fact that there was a showing that the petitioner therein learned about the property as early as 1973;<sup>20</sup> (3) the DepEd could not have known or anticipated that its possession of the lot would later be questioned as the property was donated by the Municipality of Daraga, which had a tax declaration in its name;<sup>21</sup> and (4) the DepEd already expended funds for the construction of the public school and improvements thereon and both the government and the school children/teachers/personnel would be prejudiced if the property would be returned to the heirs of Oñate.<sup>22</sup>

In the instant case, however, the Republic failed to positively prove the elements of laches. In the Office of the Solicitor General’s Comment,<sup>23</sup> there was no statement as to when petitioner or his predecessors-in-interest learned about the government’s breach. The Deed of Donation expressly provided that the government was obliged to construct a government hospital. Thus, it cannot reasonably claim that it could not have known or anticipated that its possession and occupancy would later be questioned. Further, unlike *Dept. of Education, Division of Albay v. Oñate*, where the government invested significant amounts for the construction of a public school, the construction in this case was never completed as only the foundation of what it constructed remained. Thus, any prejudice to the government would not have been caused by petitioner’s delay in asserting his right, but by the government’s unreasonable delay in constructing the hospital.

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<sup>18</sup> Id. at 648-649.

<sup>19</sup> Id. at 651-652.

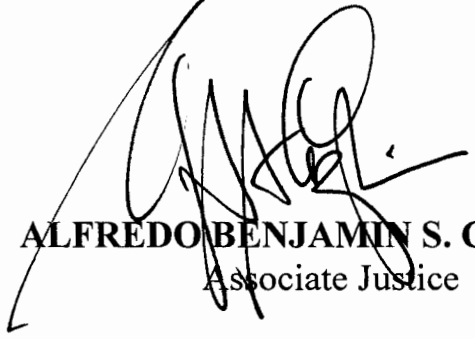
<sup>20</sup> Id. at 652.

<sup>21</sup> Id. at 653.

<sup>22</sup> Id.

<sup>23</sup> *Rollo*, pp. 312-326.

Given the foregoing reasons, I concur in the result reached by the *ponencia* and vote to **GRANT** the instant Petition.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice