THY WILL BE DONE by Atty. Angelo M. Cabrera

SURVIVORSHIP AGREEMENTS, Part 1

News broke two weeks ago about the late Iggy Arroyo's bank accounts being allegedly ordered frozen by the Bureau of Internal Revenue.

But BIR Commissioner Kim Henares was quick to clarify that the agency did not order but merely reminded banks to adhere to the law concerning the automatic freezing of bank deposits of deceased depositors. Section 97 of the Tax Code provides that, "If a bank has knowledge of the death of a person, who maintained a bank deposit account alone, or jointly with another, it shall not allow any withdrawal from the said deposit account, unless estate taxes have been paid." In other words, unless there is a clearance from the BIR that certifies payment of taxes, the deposits of Iggy Arroyo, whether alone or *jointly with another,* may not be released by the banks.

This reminds me of an interesting albeit controversial ruling of the Supreme Court in Vitug vs. CA (G.R. No. 82027 March 29, 1990) concerning survivorship agreements.

In said case, the Supreme Court had the occasion to look into the nature of survivorship agreements. There the widower, who was a joint depositor with the deceased spouse under a survivorship agreement, insisted that the funds were his exclusive property having acquired the same by virtue of a survivorship agreement executed with his wife and the bank.

The Supreme Court ruled that the conveyance in question is not one of *mortis causa*, since it is not embodied in a will. Neither is the survivorship agreement a donation *inter vivos*, for obvious reasons, because it was to take effect after the death of one party.

It went on to say that the spouses are not prohibited by law to invest conjugal property by way of a joint and several bank account, more commonly denominated in banking parlance as an "and/or" account. In the case at bar, when the spouses opened the savings account, they merely put what rightfully belonged to them in a money-making venture. They did not dispose of it in favor of the other, which would have arguably been sanctionable as a prohibited donation.

The validity of the contract, the Supreme Court said, seems debatable by reason of its "survivor-take-all" feature, but it said that in reality, the contract imposed a mere obligation with a term, the term being death. It held that such agreements are permitted under article 2010 of the Civil Code.

But it qualified that, although the survivorship agreement is per se not contrary to law, its operation or effect may be violative of the law. For instance, if it be shown in a given case that

such agreement is a mere cloak to hide an inofficious donation, to transfer property in fraud of creditors, or to defeat the legitime of a forced heir, it may be assailed and annulled upon such grounds.

Ultimately, the Supreme Court said that since the wife predeceased her husband, the latter has acquired upon her death a vested right over the amounts under the account. Being the separate property of the husband, it forms no more part of the estate of the deceased.

My problem with this ruling is that when the funds become part of the estate of the surviving joint-depositor, it necessarily affects the legitime or rightful shares of other forced heirs by virtue of the reduction of the distributable estate of the deceased joint-depositor to the extent of his share in the jointly-owned funds that is transferred to his co-depositor upon his death. This means that for the agreement to work without defeating the law concerning legitimes or that part of the inheritance that is reserved for compulsory heirs, in distributing the inheritance and computing for the rightful shares of compulsory heirs, the transferred funds must necessarily be considered as part of the estate of the deceased. And there lies the contradiction.

The other way by which this ruling can work without defeating the legitime of forced heirs is when all forced heirs are named as joint depositors with the deceased in an account with survivorship agreement.

But what does the BIR have to say about the effect of the ruling on estate taxation? Does it mean that funds transferred by virtue of a survivorship agreement are no longer subject to estate tax? That is the subject for next week.

*For comments or questions, you may email cabrera.am@amclawoffice.com .*