

Thy Will Be Done

by Atty. Angelo M. Cabrera

WAIVER OF RIGHTS OVER FUTURE INHERITANCE – IS THERE SUCH A THING?

There is a proverbial line that goes “Don’t count your chickens before they are hatched.” It simply means that one must not rely on an event that is yet to come to pass. It discourages us from making decisions based on a confident yet misplaced assumption, that anyway, we are bound to get something in the future. Indeed, many have suffered from the consequences of relying on something they have yet to receive.

Our own Civil Code has a provision on contracts that puts forth this wise advice. Article 1347 provides in part: “No contract may be entered into upon future inheritance except in cases authorized by law.”

The application of this provision is best illustrated by this case decided by the Supreme Court. Here, two issues were raised. First, whether or not a person can waive his future inheritance in favor of another, such as a lender. And second, whether or not the lender can rely on such waiver.

Maria borrowed five hundred thousand pesos from Pedro to finance a business venture. To secure the loan, she signed an instrument entitled, Waiver of Hereditary Rights and Interest Over a Real Property (Still Undivided) involving a property of her parents, who were both still alive at the time of the execution of the instrument. Pedro then executed an Affidavit of Adverse Claim and caused the same to be annotated on the transfer certificate of title of said property in order to “protect my (his) interest over said property as a Recipient/Benefactor, for the registered owners/parents might dispose (of) and/or encumber the same in a fraudulent manner without my (his) knowledge and consent, for the owner's duplicate title was not surrendered to me.”

Unfortunately, Maria’s business venture failed and she ended up reneging on her obligation.

Meanwhile, the same property was sold by Maria to spouses Jose and Rosa by virtue of a special power of attorney executed by Maria’s parents. The couple immediately took possession of the property without anyone complaining or protesting. Soon after however, they were surprised to learn of the adverse claim upon being informed by Pedro. They asserted that the annotation of Pedro's adverse claim on the TCT cannot impair their rights as new owners of the subject property. They claimed that the Waiver of Hereditary Rights and Interests

Over a Real Property (Still Undivided) upon which Pedro's adverse claim is anchored cannot be the source of any right or interest over the property.

Are they correct in their assertion?

Yes. The Supreme Court stressed that Article 1347 of the Civil Code provides that no contract may be entered into upon a future inheritance except in cases expressly authorized by law. For the inheritance to be considered "future", the succession must not have been opened at the time of the contract. A contract may be classified as a contract upon future inheritance, prohibited under the second paragraph of Article 1347, where the following requisites concur: (1) That the succession has not yet been opened; (2) That the object of the contract forms part of the inheritance; and (3) That the promissor has, with respect to the object, an expectancy of a right which is purely hereditary in nature.

Being an expectancy of a right, as shown by the facts, the Waiver of Hereditary Rights and Interest Over a Real Property (Still Undivided) executed by Maria in favor of Pedro is not valid and that same cannot be the source of any right or create any obligation between them for being violative of the second paragraph of Article 1347 of the Civil Code.

On the validity and effectivity of petitioner/lender's adverse claim, Section 70 of PD 1529 provides that it is necessary that the claimant has a right or interest in the registered land adverse to the registered owner and that it must arise subsequent to registration. Here, as no right or interest on the subject property flows from Maria's invalid waiver of hereditary rights upon Pedro, the latter is thus not entitled to the registration of his adverse claim. Therefore, petitioner's adverse claim is without any basis and must consequently be adjudged invalid and ineffective and necessarily be cancelled. (G.R. No. 165300, April 23, 2010)

It is clear that both Maria and Pedro relied on Maria's future inheritance from her parents to secure her loan from Pedro. They signed an instrument for Maria to relinquish a property that she had yet to inherit, anchored merely on the expectancy that upon the death of her parents some of their properties would be passed on to her anyway. Maria and Pedro counted chickens even before they hatched.

Belated birthday greetings to Zeneida "Nini" Quezon Avancena who celebrated her 91st birthday last April 9 – Araw ng Kagitingan. Mrs. Avancena is the only surviving daughter of the late President Manuel L. Quezon. It is said that when Bataan fell on April 9, 1942, President Quezon instructed his staff not to tell her daughter Nini about the defeat because it was her birthday. Blessed birthday Lola Nini.

This column is dedicated to educating the public about the importance and value of estate and succession planning. For comments or inquiries, you may email cabrera.am@amclawoffice.com.