

SECOND DIVISION

[G.R. No. 134100, September 29, 2000]

**PURITA ALIPIO, PETITIONER, VS. COURT OF APPEALS AND
ROMEO G. JARING, REPRESENTED BY HIS ATTORNEY-IN-FACT
RAMON G. JARING, RESPONDENTS.**

DECISION

MENDOZA, J.:

The question for decision in this case is whether a creditor can sue the surviving spouse for the collection of a debt which is owed by the conjugal partnership of gains, or whether such claim must be filed in proceedings for the settlement of the estate of the decedent. The trial court and the Court of Appeals ruled in the affirmative. We reverse.

The facts are as follows:

Respondent Romeo Jaring^[1] was the lessee of a 14.5 hectare fishpond in Barito, Mabuco, Hermosa, Bataan. The lease was for a period of five years ending on September 12, 1990. On June 19, 1987, he subleased the fishpond, for the remaining period of his lease, to the spouses Placido and Purita Alipio and the spouses Bienvenido and Remedios Manuel. The stipulated amount of rent was P485,600.00, payable in two installments of P300,000.00 and P185,600.00, with the second installment falling due on June 30, 1989. Each of the four sublessees signed the contract.

The first installment was duly paid, but of the second installment, the sublessees only satisfied a portion thereof, leaving an unpaid balance of P50,600.00. Despite due demand, the sublessees failed to comply with their obligation, so that, on October 13, 1989, private respondent sued the Alipio and Manuel spouses for the collection of the said amount before the Regional Trial Court, Branch 5, Dinalupihan, Bataan. In the alternative, he prayed for the rescission of the sublease contract should the defendants fail to pay the balance.

Petitioner Purita Alipio moved to dismiss the case on the ground that her husband, Placido Alipio, had passed away on December 1, 1988.^[2] She based her action on Rule 3, §21 of the 1964 Rules of Court which then provided that "when the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules." This provision has been amended so that now Rule 3, §20 of the 1997 Rules of Civil Procedure provides:

When the action is for the recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action was pending at the time of such death, it

shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person.

The trial court denied petitioner's motion on the ground that since petitioner was herself a party to the sublease contract, she could be independently impleaded in the suit together with the Manuel spouses and that the death of her husband merely resulted in his exclusion from the case.^[3] The Manuel spouses failed to file their answer. For this reason, they were declared in default.

On February 26, 1991, the lower court rendered judgment after trial, ordering petitioner and the Manuel spouses to pay private respondent the unpaid balance of P50,600.00 plus attorney's fees in the amount of P10,000.00 and the costs of the suit.

Petitioner appealed to the Court of Appeals on the ground that the trial court erred in denying her motion to dismiss. In its decision^[4] rendered on July 10, 1997, the appellate court dismissed her appeal. It held:

The rule that an action for recovery of money, debt or interest thereon must be dismissed when the defendant dies before final judgment in the regional trial court, does not apply where there are other defendants against whom the action should be maintained. This is the teaching of *Climaco v. Siy Uy*, wherein the Supreme Court held:

Upon the facts alleged in the complaint, it is clear that Climaco had a cause of action against the persons named as defendants therein. It was, however, a cause of action for the recovery of damages, that is, a sum of money, and the corresponding action is, unfortunately, one that does not survive upon the death of the defendant, in accordance with the provisions of Section 21, Rule 3 of the Rules of Court.

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However, the deceased Siy Uy was not the only defendant, Manuel Co was also named defendant in the complaint. Obviously, therefore, the order appealed from is erroneous insofar as it dismissed the case against Co. (Underlining added)

Moreover, it is noted that all the defendants, including the deceased, were signatories to the contract of sub-lease. The remaining defendants cannot avoid the action by claiming that the death of one of the parties to the contract has totally extinguished their obligation as held in *Imperial Insurance, Inc. v. David*:

We find no merit in this appeal. Under the law and well settled jurisprudence, when the obligation is a solidary one, the creditor may bring his action in toto against any of the debtors obligated in solidum. Thus, if husband and wife bound themselves jointly and severally, in case of his death, her

liability is independent of and separate from her husband's; she may be sued for the whole debt and it would be error to hold that the claim against her as well as the claim against her husband should be made in the decedent's estate. (Agcaoili vs. Vda. de Agcaoili, 90 Phil. 97).^[5]

Petitioner filed a motion for reconsideration, but it was denied on June 4, 1998.^[6] Hence this petition based on the following assignment of errors:

- A. THE RESPONDENT COURT COMMITTED REVERSIBLE ERROR IN APPLYING CLIMACO v. SIY UY, 19 SCRA 858, IN SPITE OF THE FACT THAT THE PETITIONER WAS NOT SEEKING THE DISMISSAL OF THE CASE AGAINST REMAINING DEFENDANTS BUT ONLY WITH RESPECT TO THE CLAIM FOR PAYMENT AGAINST HER AND HER HUSBAND WHICH SHOULD BE PROSECUTED AS A MONEY CLAIM.
- B. THE RESPONDENT COURT COMMITTED REVERSIBLE ERROR IN APPLYING IMPERIAL INSURANCE INC. v. DAVID, 133 SCRA 317, WHICH IS NOT APPLICABLE BECAUSE THE SPOUSES IN THIS CASE DID NOT BIND THEMSELVES JOINTLY AND SEVERALLY IN FAVOR OF RESPONDENT JARING.^[7]

The petition is meritorious. We hold that a creditor cannot sue the surviving spouse of a decedent in an ordinary proceeding for the collection of a sum of money chargeable against the conjugal partnership and that the proper remedy is for him to file a claim in the settlement of estate of the decedent.

First. Petitioner's husband died on December 1, 1988, more than ten months before private respondent filed the collection suit in the trial court on October 13, 1989. This case thus falls outside of the ambit of Rule 3, §21 which deals with dismissals of collection suits because of the death of the defendant during the pendency of the case and the subsequent procedure to be undertaken by the plaintiff, i.e., the filing of claim in the proceeding for the settlement of the decedent's estate. As already noted, Rule 3, §20 of the 1997 Rules of Civil Procedure now provides that the case will be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein will then be enforced in the manner especially provided in the Rules for prosecuting claims against the estate of a deceased person. The issue to be resolved is whether private respondent can, in the first place, file this case against petitioner.

Petitioner and her late husband, together with the Manuel spouses, signed the sublease contract binding themselves to pay the amount of stipulated rent. Under the law, the Alipios' obligation (and also that of the Manuels) is one which is chargeable against their conjugal partnership. Under Art. 161(1) of the Civil Code, the conjugal partnership is liable for —

All debts and obligations contracted by the husband for the benefit of the conjugal partnership, and those contracted by the wife, also for the same purpose, in the cases where she may legally bind the partnership.^[8]

When petitioner's husband died, their conjugal partnership was automatically dissolved^[9] and debts chargeable against it are to be paid in the settlement of

estate proceedings in accordance with Rule 73, §2 which states:

Where estate settled upon dissolution of marriage. — When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse. If both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either.

As held in *Calma v. Tañedo*,^[10] after the death of either of the spouses, no complaint for the collection of indebtedness chargeable against the conjugal partnership can be brought against the surviving spouse. Instead, the claim must be made in the proceedings for the liquidation and settlement of the conjugal property. The reason for this is that upon the death of one spouse, the powers of administration of the surviving spouse ceases and is passed to the administrator appointed by the court having jurisdiction over the settlement of estate proceedings.^[11] Indeed, the surviving spouse is not even a *de facto* administrator such that conveyances made by him of any property belonging to the partnership prior to the liquidation of the mass of conjugal partnership property is void.^[12]

The ruling in *Calma v. Tañedo* was reaffirmed in the recent case of *Ventura v. Militante*.^[13] In that case, the surviving wife was sued in an amended complaint for a sum of money based on an obligation allegedly contracted by her and her late husband. The defendant, who had earlier moved to dismiss the case, opposed the admission of the amended complaint on the ground that the death of her husband terminated their conjugal partnership and that the plaintiff's claim, which was chargeable against the partnership, should be made in the proceedings for the settlement of his estate. The trial court nevertheless admitted the complaint and ruled, as the Court of Appeals did in this case, that since the defendant was also a party to the obligation, the death of her husband did not preclude the plaintiff from filing an ordinary collection suit against her. On appeal, the Court reversed, holding that —

as correctly argued by petitioner, the conjugal partnership terminates upon the death of either spouse. . . . Where a complaint is brought against the surviving spouse for the recovery of an indebtedness chargeable against said conjugal [partnership], any judgment obtained thereby is void. The proper action should be in the form of a claim to be filed in the testate or intestate proceedings of the deceased spouse.

In many cases as in the instant one, even after the death of one of the spouses, there is no liquidation of the conjugal partnership. This does not mean, however, that the conjugal partnership continues. And private respondent cannot be said to have no remedy. Under Sec. 6, Rule 78 of the Revised Rules of Court, he may apply in court for letters of administration in his capacity as a principal creditor of the deceased . . . if after thirty (30) days from his death, petitioner failed to apply for administration or request that administration be granted to some other person.^[14]

The cases relied upon by the Court of Appeals in support of its ruling, namely, *Climaco v. Siy Uy*^[15] and *Imperial Insurance, Inc. v. David*,^[16] are based on