G.R. No. 223134 – *VICENTE G. HENSON, JR., Petitioner, v. UCPB GENERAL INSURANCE CO., INC., Respondent.*

Promulgated:

August 14, 2019

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DISSENTING OPINION

BERSAMIN, *C.J.*:

The majority opinion overturns the ruling in *Vector Shipping Corporation v. American Home Assurance Company*[1] wherein the Court has held that subrogation under Article 2207 of the *Civil Code* gives rise to a cause of action created by law; hence, the applicable prescriptive period is 10 years.

I submit that the present case has not given the Court any grounds to warrant the overturn. The dictum in *Vector Shipping Corporation v. American Home Assurance Company* remains good law in the context of Article 2207 of the *Civil Code*.

Before anything more, however, a review of the antecedents is enlightening.

National Arts Studio and Color Lab (National Arts Studio) leased for the period from 1989 to 1999 the front portion of the ground floor of a two-storey building then owned by Vicente G. Henson (Henson) located on Sto. Rosario Street in Angeles City, Pampanga.[2] In 1999, National Arts Studio leased the right front portion of the ground floor and the entire second floor of the building, and renovated its piping assembly. Meanwhile, Copylandia Office Systems Corporation (Copylandia) moved to the ground floor.[3]

A water leak occurred in the building on **May 9, 2006** and damaged Copylandia's various equipment to the tune of ₱2,062,640.00.[4] Copylandia filed its claim for indemnity with respondent UCPB General Insurance Co., Inc. (UCPBGen), the insurer of its equipment.[5] On **November 2, 2006,**

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[1] G.R. No. 159213, July 3, 2013, 700 SCRA 385.
[2] *Rollo*, pp. 196-197.
[3] Id.
[4] Id.
[5] Id. at 198.

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Copylandia and UCPBGen agreed to settle for ₱1,326,342.76,[6] thereby subrogating UCPBGen to the rights of Copylandia arising from the water leak incident. On **May 20, 2010,** UCPBGen demanded payment from National Arts Studio, but without success.[7] Hence, UCPBGen sued National Arts Studio, among others, for damages in the Regional Trial Court (RTC) in Makati City. The suit, docketed as Civil Case No. 10-885, was raffled to Branch 138 of the RTC.[8]

In 2010, Henson transferred the ownership of the building to Citrinne Holdings, Inc. (CTI), wherein he was a stockholder and the President at the same time.[9]

UCPBGen amended its complaint on October 6, 2011 to implead CTI as a party-defendant by virtue of its being the new owner of the building. UCPBGen later changed its mind, and filed on April 21, 2014 a *Motion to Admit Attached Amended Complaint and Pre-Trial Brief* praying that Henson, instead of CTI, be impleaded as the party-defendant considering that he was the owner of the building at the time of the water leak incident.[10]

CTI opposed the motion principally on the ground of prescription, and contended that UCPBGen's cause of action, having arisen from quasi-delict, must be brought within four years from its accrual on **May 9, 2006**.[11]

On June 10, 2014, the RTC directed the dropping of CTI as a party-defendant and the joining of Henson as one of the party-defendants.[12] It observed that UCPBGen's cause of action against the defendants, including Henson, arose when it paid Copylandia's insurance claim and thereby became subrogated to the latter's rights and claims arising from the water leak incident; that UCPBGen was merely enforcing its right of subrogation which prescribed in 10 years reckoned from the date of Copylandia's indemnification on November 2, 2006; and that UCPBGen's claim against Henson had yet to prescribe on April 21, 2014 when it sought to include him as party-defendant.

On September 22, 2014, the RTC denied CTI's motion for reconsideration.[13]

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6 Id.
7 Id.
8 Id.
9 Id.
10 Id.
11 Id. at 53.
12 Id. at 52-55.
13 Id. at 56-58.

On his part, Henson brought a petition for *certiorari* in the Court of Appeals (CA).

On November 13, 2015, the CA rendered its decision upholding the ruling of the RTC.[14] The CA agreed that UCPBGen's cause of action was not based on quasi-delict, but on an obligation created by law, and, as such, the prescriptive period was 10 years reckoned from its accrual.

After the CA denied Henson's motion for reconsideration on February 26, 2016,[15] he appealed to the Court.

The issue for consideration is whether or not the CA correctly ruled that UCPBGen's cause of action was based on an obligation created by law that prescribed in 10 years.[16]

The majority opinion states that –

> In sum, as legal subrogation is not equivalent to conventional subrogation, no new obligation is created by virtue of the insurer's payment under Article 2207 of the Civil Code; also, as legal subrogation is not the same as an assignment of credit (as the former is in fact, called an "equitable assignment"), no privity of contract is needed to produce its legal effects. Accordingly, "the insurer can take nothing by subrogation but the rights of the insured, and is subrogated only to such rights as the insured possesses. This principle has been frequently expressed in the form that the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer, since the insurer as subrogee, in contemplation of law, stands in the place of the insured and succeeds to whatever rights he may have in the matter. ***Therefore, any defense which a wrongdoer has against the insured is good against the insurer subrogated to the rights of the insured,"*** and this would clearly include the defense of prescription.
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> Based on the above-discussed considerations, the Court must heretofore **abandon the ruling in *Vector*** that an insurer may file an action against the tortfeasor within ten (10) years from the time he indemnifies the insured. **Following the principles of subrogation, the insurer only steps into the shoes of the insured and therefore, for purposes of prescription, inherits only the remaining period within which the insured may file an action against the wrongdoer.** To be sure, the prescriptive period of the action that the insured may file against the wrongdoer begins at the time that the tort was committed and the loss/injury occurred against the insured. The indemnification of the insured by the insurer only allows it to be subrogated to the former's rights, and does not create a new reckoning point for the cause of action that the insured originally has against the wrongdoer.
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> Be that as it may, it should, however, be clarified that this Court's abandonment of the *Vector* doctrine should be **prospective** in application for the reason that judicial decisions applying or interpreting the laws or the

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[14] Id. at 196-203; penned by Associate Justice Stephen C. Cruz, with Associate Justice Elihu A. Ybañez and Associate Justice Ramon Paul L. Hernando concurring.

[15] Id. at 193-194.

[16] Decision, p. 4.

> Constitution, until reversed, shall form part of the legal system of the Philippines.[17]

The majority opinion concludes that because the insurer merely stepped into the shoes of the insured, its cause of action against the debtor was already barred by prescription considering that the cause of action was in the nature of a quasi-delict that was subject to the prescriptive period of four years.[18]

I **DISSENT**.

I submit that the ruling on prescription in *Vector Shipping Corporation v. American Home Assurance Company* is the applicable rule for this case.

Article 2207 of the *Civil Code* expressly provides:

> Article 2207. **If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract.** If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

To me, the letter and intent of the law are too clear and forthright to be ignored. Subrogation of the insurer under Article 2207 of the *Civil Code* gives rise to an obligation *created by law*. With the clarity and forthrightness of the legal provision on the nature of subrogation as an obligation arising from law, the cause of action based on subrogation prescribes in 10 years pursuant to Article 1144(2) of the *Civil Code*.

The Court pointed this out in *Vector Shipping Corporation v. American Home Assurance Company*, thusly:

> The juridical situation arising under Article 2207 of the *Civil Code* is well explained in *Pan Malayan Insurance Corporation v. Court of Appeals,* as follows:
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> > Article 2207 of the Civil Code is founded on the well-settled principle of subrogation. If the insured property is destroyed or damaged through the fault or negligence of a party other than the assured, then the insurer, upon payment to the assured, will be subrogated to the rights of the assured to

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[17] Id. at 10-11.
[18] Id. at 6.

> recover from the wrongdoer to the extent that the insurer has been obliged to pay. **Payment by the insurer to the assured operates as an equitable assignment to the former of all remedies which the latter may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer.** [*Compania Maritama v. Insurance Company of North America,* G.R. No. L-18965, October 30, 1964, 12 SCRA 213; *Fireman's Fund Insurance Company v. Jamila & Company, Inc.,* G.R. No. L-27427, April 7, 1976, 70 SCRA 323].

Verily, the contract of affreightment that Caltex and Vector entered into did not give rise to the legal obligation of Vector and Soriano to pay the demand for reimbursement by respondent because it concerned only the agreement for the transport of Caltex's petroleum cargo. As the Court has aptly put it in *Pan Malayan Insurance Corporation v. Court of Appeals, supra,* **respondent's right of subrogation pursuant to Article 2207, *supra,* was "not dependent upon, nor d[id] it grow out of, any privity of contract or upon written assignment of claim [but] accrue[d] simply upon payment of the insurance claim by the insurer."**[19]

In *Fireman's Fund Insurance Company v. Jamila & Company, Inc.*,[20] the Court has expounded on the rule enunciated under Article 2207 of the *Civil Code, viz.*:

> Article 2207 is a restatement of a settled principle of American jurisprudence. Subrogation has been referred to as the doctrine of substitution. It "is an arm of equity that may guide or even force one to pay a debt for which an obligation was incurred but which was in whole or in part paid by another" (83 C.J.S. 576, 578, note 16, citing Fireman's Fund Indemnity Co. *vs.* State Compensation Insurance Fund, 209 Pac. 2d 55).
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> "Subrogation is founded on principles of justice and equity, and its operation is governed by principles of equity. It rests on the principle that substantial justice should be attained regardless of form, that is, its basis is the doing of complete, essential, and perfect justice between all the parties without regard to form" (83 C.J.S. 579-80).
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> Subrogation is a normal incident of indemnity insurance (Aetna L. Ins. Co. *vs.* Moses, 287 U.S. 530, 77 L. ed. 477). Upon payment of the loss, the insurer is entitled to be subrogated *pro tanto* to any right of action which the insured may have against the third person whose negligence or wrongful act caused the loss (44 Am. Jur. 2nd 745, citing Standard Marine Ins. Co. *vs.* Scottish Metropolitan Assurance Co., 283 U.S. 284, 75 L. ed. 1037).

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19 Supra note 1, at 394-395.

20 L-27427, April 7, 1976, 70 SCRA 323.

> The right of subrogation is of the highest equity. The loss in the first instance is that of the insured but after reimbursement or compensation, it becomes the loss of the insurer (44 Am. Jur. 2d 746, note 16, citing Newcomb *vs*. Cincinnati Ins. Co., 22 Ohio St. 382).
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> "Although many policies including policies in the standard form, now provide for subrogation, and thus determine the rights of the insurer in this respect, the equitable right of subrogation as the legal effect of payment inures to the insurer without any formal assignment or any express stipulation to that effect in the policy" (44 Am. Jur. 2nd 746). Stated otherwise, when the insurance company pays for the loss, such payment operates as an equitable assignment to the insurer of the property and all remedies which the insured may have for the recovery thereof. That right is not dependent upon, nor does it grow out of, any privity of contract, or upon written assignment of claim, and payment to the insured makes the insurer an assignee in equity (Shambley *vs*. Jobe-Blackley Plumbing and Heating Co., 264 N. C. 456, 142 SE 2d 18).[21]

There is no question that the right of subrogation is a creature of equity, owing its origin at common law,[22] and later evolved as a doctrine through the decision of Lord Hardwicke in *Randal v. Cockran.*[23] Lord Hardwicke pronounced in *Randal v. Cockran* that:

> x x x **The person originally sustaining the loss was the owner; but after satisfaction made to him, the insurer**.
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> **No doubt, but from that time, as to the goods themselves, if restored *in specie*, or compensation made for them, the assured stands as a trustee for the insurer, in proportion for what he paid.**[24]

As can be seen, the doctrine of subrogation essentially holds that an insurer who has fully indemnified an insured against a loss covered by a contract of insurance between them may ordinarily enforce, in the insurer's own name, any right of recourse available to the insured. **The role of equity comes into play once the insurer has indemnified the insured. Payment is the crucial event that allows the insurer to succeed to the rights of the insured. Unless the insurer pays pursuant to the policy, there is no loss that he has sustained and, therefore, there arises no right of recovery.**[25]

Since the time of the pronouncement in *Randal v. Cockran*, therefore, it has been judicially recognized that the insurer's payment to the insured produces the following effects, namely:

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[21] Id. at 327-328.

[22] See Marasinghe, M.L., *An Historical Introduction to the Doctrine of Subrogation: The Early History of the Doctrine I and II, An Historical Introduction to the Doctrine of Subrogation: The Early History of the Doctrine I and II,* Valparaiso University Law Review, Vol. 10, No. 1, pp. 45-65; and Vol. 10, No. 2, pp. 275-299.

[23] 1 Ves. Sen. 98, 27 Eng. Rep. 916 (1748).

[24] Id., as quoted and cited in Marasinghe, supra note 22, at 63.

[25] Marasinghe, supra, note 22, at 298.

(1) The person making the payment to the third party was recognized as having acquired *at the moment of paying* a right to claim a contribution or an indemnity (as the case might be) from the principal obligor;

(2) The acquisition of that right did not result from an express agreement to transfer such right, which the third party had against the principal obligor; and

(3) Both the common law courts and the courts of equity accepted that this acquisition of rights against the principal obligor was an operation of equity, not of the common law.[26]

The automatic transfer of rights from the payor to the payee occurs *at the moment of payment*, and it takes place *by act of law*.[27] Yet, the *ipso jure* transfer of rights from the insured to the insurer does not result to a simple case of assignment.

Under insurance law principles, *assignment* varies from *subrogation* in both the method of creation and the results produced.[28]

Subrogation arises by operation of law when the insurer pays either a portion or the entire amount of property damages an insured individual claims under a policy, and may exist even without a statute or agreement that provides for it.[29] Subrogation accompanies payment, and carries with it only the limited claim to reimbursement, arising as it does upon payment to discharge a third person's indebtedness.[30] If the insurer has a right to subrogation, Philippine laws – particularly Article 2207 of the *Civil Code* – confer upon the insurer the status of a real party-in-interest with regard to the indemnity paid. That the insurer becomes the real party-in-interest after subrogation was aptly explained in *Philippine Airlines, Inc. v. Heald Lumber Company*,[31] whereby the Court clarified that:

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[26] Marasinghe, M.L., supra note 24, at 279.

[27] Id. at 277, citing *London Assurance Co. v. Sainsbury* where it was held that:

> The care of a sheriff who has paid the whole debt is very strong, for he stands in the place of the debtor, by *act of Law;* yet he must sue in the name of the plaintiff.

London Assurance Co. v. Sainsbury is said to have settled three issues, namely: (1) the trust concept enables the insurer to sue a tortfeasor of the assured once the payment was made pursuant to the policy; (2) such an action must be brought in the name of the assured; and (3) the subrogation process occurs by operation of law.

[28] Bueler, Jennifer A., *Understanding the Difference Between the Right to Subrogation and Assignment of an Insurance Claim – Keisker v. Farmer,* Missouri Law Review, Volume 68, Issue 4, Fall 2003, p. 950.

[29] Id. at 949.

[30] Snellings III, George M., *The Role of Subrogation by Operation of Law and Related Problems in the Insurance Field,* Louisiana Law Review, Volume 22, Number 1, December 1961, pp. 225, 227.

[31] 101 Phil. 1031 (August 16, 1957).

xxxx In this jurisdiction, we have our own legal provision which in substance differs from the American law. We refer to Article 2207 of the New Civil Code which provides:

> ART. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

Note that if a property is insured and the owner receives the indemnity from the insurer, it is provided in said article that the insurer is deemed subrogated to the rights of the insured against the wrongdoer and if the amount paid by the insurer does not fully cover the loss, then the aggrieved party is the one entitled to recover the deficiency. Evidently, under this legal provision, the real party in interest with regard to the portion of the indemnity paid is the insurer and not the insured. The reason is obvious. The payment of the indemnity by the insurer to the insured does not make the latter a trustee of the former as in the American law. This matter being statutory, the same must be governed by our own law in this jurisdiction.

This interpretation finds support in the explanatory note given by the Code Commission in proposing the adoption of the article under consideration. Thus, said Commission, in its report on the proposed Civil Code of the Philippines, referring to the article in question, says:

> The rule in article 2227 (Art. 2207 of the Code as enacted) about insurance indemnity *is different from the American law*. Said article provides:
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> ART. 2227. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who was violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss the aggrieved party shall be entitled to recover the deficiency from the person causing the loss of injury.
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> *According to American jurisprudence, the fact that the plaintiff has been indemnified by an insurance company cannot lessen the damages to be paid by the defendant*. Such rules give more damages than those actually suffered by the plaintiff, and the defendant, if also sued by the insurance company for imbursement, would have to pay in many cases twice the damages he has caused. *The proposed article would seem to be a better adjustment of the rights* of the three parties concerned. (Report of Code Commission on the Proposed Civil Code of the Philippines, p. 73) (Emphasis supplied)

> It is insisted that despite the subrogation of the insurer to the rights of the insured, the latter can still bring the action in its name because the subrogation vests in the latter the character of a trustee charged with the duty to pay to the insurer so much of the recovery as corresponds to the amount it had received as a partial indemnity. This cannot be true in this for before a person can sue for the benefit of another under a trusteeship, he must be "a trustee of an express trust" (Section 3, Rule 3, Rules of Court). Thus, under this provision, "in order that a trustee may sue or be sued alone, it is essential that his trust should be express, that is, a trust created by the direct and positive acts of the parties, by some writing, deed, or will or by proceedings in court. The provision does not apply in cases of implied trust, that is, a trust which may be inferred merely from the acts of the parties or from other circumstances" (Moran, Comments on the Rules of Court, Vol. I, 1952 Ed., p. 35).
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> It also contended that to adopt a contrary rule to what is authorized by the American statutes would be splitting a cause of action or promoting multiplicity of suits which should be avoided. This contention cannot also hold water considering that under our rules both the insurer and the insured may join as plaintiffs to press their claims against the wrongdoer when the same arise out of the same transaction or event. This is authorized by Section 6, Rule 3, of the Rules of Court.[32] xxxx

In contrast, assignment is preceded by an agreement by virtue of which the owner of a credit (known as the assignor), by a legal cause – such as sale, dation in payment, exchange or donation – and without need of the debtor's consent, transfers that credit and its accessory rights to another (known as the assignee), who thereby acquires the power to enforce it, to the same extent as the assignor could have enforced it against the debtor.[33] Unlike the right to subrogation that arises only upon the insurer's payment of the insured's claim, assignment of the insured's property damage claim may take place even before the damage occurs.[34] After the assignment of the claims of the insured, the insurer becomes the real party-in-interest and may bring a claim in its own name against the tortfeasor or the latter's insurer.[35]

The only similarity that the doctrine of subrogation and the concept of assignment share is that the transferee has no right independent of the transferor. In insurance, the insurer can only enforce the rights that the insured has; consequently, the insurer, as the person paying for the loss, cannot assume a better right than the insured, or person being indemnified. Yet, it must be recalled that subrogation, as an equitable principle, is supposed to ensure that the person who actually caused damages will eventually pay for those damages.[36] To underscore, this allowance of

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[32] Id. at 1035-1037 (italicized portions are part of the original text).
[33] See *Ledonio v. Capitol Development Corporation,* G.R. No. 149040, July 4, 2007, 526 SCRA 379, 393-394.
[34] Bueler, Jennifer A., supra note 28 at 951.
[35] Id. at p. 953.
[36] Id. at p. 949.

subrogation has its roots in the equitable doctrine of preventing unjust enrichment.[37]

If we adhere to the majority opinion's holding that subrogation is akin to assignment, *which means that the insurer merely steps into the shoes of the insured*, then an insurance claim filed after or even near the end of the prescriptive period to bring an action arising from quasi-delict may possibly defeat the fundamental purpose of subrogation as an arm of equity and justice. Moreover, the majority opinion's submission overrides the fact that the insurer's cause of action, or his right to recover the indemnity, only arises by reason of the payment made by the insurer independent of any agreement with the insured. Thus, once the insured received the payment, he is no longer the loser because his loss has been remedied by the insurer.[38] At that point, the insurer became the loser and his right to recover the payment he made to the insured then arises by operation of law.

Based on the foregoing, the dictum in *Vector Shipping Corporation v. American Home Assurance Company*, that subrogation gives rise to an action created by operation of law, and that, consequently, the action prescribes in 10 years reckoned from the moment of payment, is unassailable. With UCPBGen's cause of action against Henson, which accrued on November 2, 2006, not yet prescribed by April 21, 2014 when UCPBGen impleaded him as a party-defendant, Civil Case No. 10-885 should be allowed to prosper against him.

ACCORDINGLY, I vote to **DENY** the petition for review on *certiorari*; and to **AFFIRM** the November 13, 2015 decision and February 26, 2016 resolution of the Court of Appeals promulgated in C.A.-G.R. SP No. 138147.

LUCAS P. BERSAMIN
Chief Justice

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[37] Snellings III, George M., *The Role of Subrogation by Operation of Law and Related Problems in the Insurance Field,* Louisiana Law Review, Volume 22, Number 1, December 1961, p. 228.

[38] Marasinghe, M.L., *An Historical Introduction to the Doctrine of Subrogation: The Early History of the Doctrine I,* Valparaiso University Law Review, Vol. 10, No. 1, p. 63.