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

Promulgated: August 14, 2019

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CONCURRING OPINION

LAZARO-JAVIER, *J.*:

I concur with the concise but exhaustive ponencia of my senior colleague, Madam Justice Estela M. Perlas-Bernabe. May I just add a few thoughts to explain why I support Justice Perlas-Bernabe's ponencia.

As their respective names suggest, *legal* subrogation differs from *conventional*[1] subrogation in that the former arises by operation of law while the latter comes from the agreement between the subrogor and the subrogee. Legal subrogation is oftentimes referred to as an *equitable* assignment of credit not only to indicate its historical origin but also its reference to circumstances *(or the equities of a case)* upon which the law builds and provides for a remedy.[2]

But more than what its name suggests, it is the *purpose* of legal subrogation that *defines the scope of its legal effects*. It has been said that legal subrogation is "an equitable principle to prevent unjust enrichment."[3] Accordingly:

Limitations on the Right

> The right of subrogation, with its origin in the Civil Law, is merely an equitable right. **It is not enforced at the expense of a legal right.** In this State the Court of Appeals in a number of cases has enunciated the principles just stated and **has refused substitution"... when by so doing it will work an injury upon other persons by destroying their legal or equitable rights**. From the above, it is clear that **the right of subrogation is not granted against a superior equity or a legal right, but that a judgment creditor has no such superior equity as entitles him to the benefit of this principle**.
>
> It would hardly seem necessary to cite authorities for the statement that **if the creditor in connection with whose rights subrogation is claimed has no rights thus to be equitably conveyed to the person claiming subrogation, no right of subrogation can arise**.

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[1] conventional. (n.d.) *West's Encyclopedia of American Law, edition 2.* (2008), https://legal-dictionary.thefreedictionary.com/conventional (last accessed August 22, 2019). Conventional means "derived from or contingent upon the mutual agreement of the parties, as opposed to that created by or dependent upon a statute or other act of the law." James M. Mullen, The Equitable Doctrine of Subrogation, 3 Md. L. Rev. 202 (1939), available at: http://digitalcommons.law.umaryland.edu/mlr/vol3/iss3/1 (last accessed August 22, 2019): "Thus, transposing one of the instances given above, if A as holder of a second mortgage on the property of B pays off the first mortgage, and has it assigned to him by the first mortgagee, the rights claimed would be adjudicated on the basis of the written assignment and not by virtue of any principle of equitable subrogation."

[2] *James M. Mullen*, Supra.

[3] *Id.*

Subrogation being a right to which a person claiming it is substituted by virtue of equitable principles, this right exists as to securities, which the creditor did not have or did not know about at the time his obligation was incurred.

Extent of the Right

This phase of the matter could probably be summarily disposed of by saying that **the equitable doctrine of subrogation when applied accords to the subrogated person all of the rights of the creditor to which the subrogee becomes thus entitled....**

In *Packham v. German Fire Insurance Company,* an insurance company had become subrogated to the rights of an insurer by paying his fire insurance loss claims on furniture and fixtures. **The rights to which the insurance company was subrogated (of course, those of the insured) comprised a claim against a third person tort feasor, who by a negligent fire had destroyed or damaged the insured's furniture and fixtures and merchandise and caused him a loss of profits. The insurance covered the furniture and fixtures only and had nothing to, do with the merchandise and loss of profits. The insured endeavored to handle his claim against the tort feasor in such a way that he could therein by settlement recover against the latter for the loss of merchandise and loss of profits, but not for the furniture and fixtures.** In connection with this, **he sued the insurance company, but the appellate court, applying the equitable doctrine of subrogation to the circumstances, felt that there could be no recovery, as by reason of having disentitled himself to sue against the tort feasor for loss of furniture and fixtures, he had thus voluntarily destroyed a right to which his insurer was entitled under the equitable doctrine of subrogation, and the insurer's right of recovery for his damages, being an indivisible right, he could not recover against the fire insurance company.**[4] *(emphasis added)*

Legal subrogation, therefore, gives rise to an *indivisible right of recovery*, that is, *indivisible from the original right pertaining to the equitable subrogor*. The equitable subrogee's right *cannot rise higher* than that of the equitable subrogor.

Further, *equity* plays a very important role in the resolution of the *scope of legal subrogation*. I think it is *highly iniquitous to continue adhering* to the *old* and *now abandoned* legal doctrine that the equitable subrogee's right of recovery accrues from the time of payment to the subrogor of the tortfeasor's liability *and* continues for *10 years after*. This is *iniquitous* when *juxtaposed against* the circumstances of a tortfeasor and his or her victim where an insurer does *not* play a role. In the *latter case*, the cause of action accrues from the time of the discovery of the tort *and* only for *four years after*.

The intervention of an insurer who pays for the damage *does not rest upon a legitimate distinction* between the former and the latter cases. In fact, the old legal doctrine appears to be *giving an unwarranted preference to the insurer* which in most if not all instances, is a big-budgeted artificial person

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[4] *Id.*

that has both the resources and capacity to immediately investigate the cause of the insured's injuries, pay for the injuries, and launch the lawsuit to recover what it has paid.

There is *no reason* for the insurer to have the luxury of time that others similarly situated, *i.e.*, those who have been injured by a tortfeasor but without an insurer to help them by, do not have. If we are to pursue the inequality further, an insurer can opt to pay an insured only after, for example, seven years, and from then on, will have ten more years to sue the tortfeasor for recovery. *The insurer is thus benefitted by a timeline that is not reasonable under the insurer's own circumstances.* This is in contrast to an uninsured victim of a tortfeasor who would only have four years from the date of discovery of the tort to pursue his or her claim. As well, the tortfeasor in the latter case would have to wait only four years until the claim against him would become stale, while in the former, he or she has to lie in wait not only for the time that the insurer decides to pay the insured victim but for 10 years more from the time of payment by the insurer to the insured, before the tortfeasor can claim prescription. Whether for the uninsured victim of the tortfeasor or the tortfeasor himself or herself, there is an inequality that is being justified only by the presence of a deep-pocketed and legally savvy and experienced insurer.

AMY C. LAZARO-JAVIER
Associate Justice

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Clerk of Court En Banc
Supreme Court