

PRESCRIPTIVE PERIOD OF AN ACCION PAULIANA

This case involves a suit for rescission of a donation allegedly made in fraud of creditors (*accion pauliana*).

Petitioner Cheng is the owner of B Shipping Lines, (BSL). Sometime Oct. 1985, X Corp. shipped on board one of BSL's vessels some 3,400 bags of copra at Masbate for delivery to Dipolog City. The shipment was covered by a marine insurance policy issued by P Insurance Co. The ship sank resulting in the total loss of the shipment. The insurer paid some P254,000 to the consignee and by virtue thereof was subrogated to the rights of said consignee. P Insurance then sued BSL to recover money paid to the consignee, based on breach of contract. While the case was pending (sometime in 1989) Cheng executed several deeds of donation transferring several parcels of land in favor of his children.

Four years after the donations were registered, the Regional Trial Court rendered judgment in favor of P Insurance and against Cheng/BSL for P254,000 plus P50,000 attorney's fees. The decision became final and a writ of execution was forthwith issued in September 1995. Almost two years lapsed but no properties of Cheng could be found against which the writ could be served.

In February 1997, P Insurance instituted a complaint with the Regional Trial Court for rescission of the deeds of donation executed by Cheng in favor of his children alleging that the transfers were in fraud of his creditors. Petitioner Cheng and his children filed an Answer alleging that prescription had set in since the donations were registered in December 1989 and the suit *quo* was filed only in February 1997 – or after the lapse of four (4) years from said date of registration.

The Regional Trial Court denied the motion to dismiss holding that the prescriptive period began to run only from December 29, 1993 the date of promulgation of the decision in the case filed against Cheng (Civil Case No. 13357).

On Appeal by petitioners, the Court of Appeals affirmed RTC's decision but held that prescription began to run only in January 1997 – when P Insurance first learned that the judgment award could not be satisfied because Cheng had no more properties in his name. Petitioners Cheng and his children sought relief with the Supreme Court.

The Supreme Court first clarified that Art. 1389 NCC (which provided that the action to claim rescission must be commenced within four years) was silent as to when the prescriptive period would commence.

Applying Article 1150, NCC it should start from the moment the cause of action accrues. And under Art. 1383 NCC, an *accion pauliana* may be availed of only after all other legal remedies have been exhausted.

For an *accion pauliana* to accrue, the following requisites must concur:

"1) That the plaintiff asking for rescission has a credit prior to the alienation, although demandable later; 2) That the debtor has made a subsequent contract conveying a patrimonial benefit to a third person; 3) That the creditor has no other legal remedy to satisfy his claim, but would benefit by rescission of the conveyance to the third person; 4) That the act being impugned is fraudulent; 5) That the third person who received the property conveyed, if by onerous title, has been an accomplice in the fraud. (Emphasis ours)"

Hence, the Court of Appeals correctly held that prescription commenced to run in January 1997 and only after it had discovered that Cheng had no more properties in his name against which the writ of execution could be served (Khe Hong Cheng et. al. vs. Court of Appeals, G.R. 144169, March 29, 2001).