EN BANC

G.R. No. 223134 – VICENTE G. HENSON, JR., *petitioner*, ***versus*** **UCPB GENERAL INSURANCE COMPANY, INC.,** *respondent.*

Promulgated:

August 14, 2019

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CONCURRING OPINION

CAGUIOA, *J.*:

I concur.

Because of the occurrence of a water leak in the building that Copylandia Office Systems Corp. (Copylandia) was leasing, its various equipment which were insured with respondent UCPB General Insurance Company, Inc. (UCPB Gen) were damaged on **May 9, 2006**. Copylandia filed a claim in the amount of ₱2,062,400.00 with UCPB Gen and on November 2, 2006, the parties settled for the amount of ₱1,326,342.76. More than 4 years after the damage to the equipment had been sustained, or on **May 20, 2010**, UCPB Gen, as subrogee to Copylandia's rights, made a demand on National Arts Studio and Color Lab (NASCL) — the entity that apparently caused the water leak — for the payment of Copylandia's claim. Eventually, UCPB Gen filed a complaint for damages against NASCL when UCPB Gen's demand failed.

Both the RTC and the CA held that UCPB Gen's cause of action has not yet prescribed since the applicable prescriptive period is 10 years based on legal subrogation which they considered to be an obligation created by law under Article 1144[1] of the Civil Code, and not 4 years based on quasi-delict (Article 1146[2]).

I concur with the *ponencia* that the applicable prescriptive period is 4 years because the cause of action is based on quasi-delict. Stated differently, the right that UCPB Gen is subrogated to is the right of Copylandia to damages arising from the quasi-delict committed by NASCL which resulted in the damage to its various equipment. The obligation of NASCL arises

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[1] ART. 1144. The following actions must be brought within ten years from the time the right of action accrues:
(1) Upon a written contract;
(2) Upon an obligation created by law;
(3) Upon a judgment.

[2] ART. 1146. The following actions must be instituted within four years:
(1) Upon an injury to the rights of the plaintiff;
(2) Upon a quasi-delict.

from quasi-delict under Article 2176 of the Civil Code and not from law.[3] Under Article 2176,

> Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no preexisting contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter [on Quasi-Delicts].

The corresponding obligation *vis-a-vis* the right created by legal subrogation under Article 2207 must be subsumed within or under the right that the subrogee may exercise against "the wrongdoer or the person who has violated the contract" because the subrogee merely steps into the shoes of the insured. Thus, the corresponding obligation of NASCL arises from quasi-delict and not from the law creating the right of subrogation in favor of respondent.

It is noted that the RTC and the CA relied on the ruling in *Vector Shipping Corp. v. American Home Assurance Co.*[4] (*Vector*) where the Court made the following pronouncement, *viz.*:

> We need to clarify, however, that we cannot adopt the CA's characterization of the cause of action as based on the contract of affreightment between Caltex and Vector, with the breach of contract being the failure of Vector to make the M/T Vector seaworthy, as to make this action come under Article 1144 (1), *supra*. Instead, we find and hold that the present action was not upon a written contract, but upon an obligation created by law. Hence, it came under Article 1144 (2) of the *Civil Code*. This is because the subrogation of respondent to the rights of Caltex as the insured was by virtue of the express provision of law embodied in Article 2207 of the *Civil Code*, to wit:
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> > 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. (Emphasis supplied)[5]

I join the *ponente* that it is now opportune to **revisit** the Court's interpretation of Article 2207 in *Vector* insofar as the obligation of "the wrongdoer or the person who has violated the contract" to the subrogee is concerned.

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3 CIVIL CODE, Art. 1157.

4 713 Phil. 198 (2013). Penned by Associate Justice Lucas P. Bersamin and concurred by Chief Justice Maria Lourdes P.A. Sereno and Associate Justices Presbitero J. Velasco, Jr., Teresita J. Leonardo-De Castro and Martin S. Villarama, Jr.

5 Id. at 206-207.

The phrase "**the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract**" in the above-quoted Article 2207 means only what it plainly states: that the insurance company merely acquires the rights of the insured in order to have a cause of action against the wrongdoer or the person who has violated the contract — the obligation of the latter being by virtue of quasi-delict or breach of contract. This is the only inference which is both legal and logical that can be derived from the quoted portion of Article 2207. If the obligation of the wrongdoer or the person who has violated the contract to the subrogee "arises from law", then what defense/s can the former interpose to exculpate him or limit his liability? I submit that the defenses which he can interpose are the very same ones he can interpose against the original plaintiff, *i.e.*, those defenses available in a quasi-delict or breach of contract case.

If his defense is based on quasi-delict, then he should be able to interpose the defense of prescription of actions arising from quasi-delict. Going back to *Vector*, the liability of Vector Shipping Corp. did not arise because its vessel was not "seaworthy." Rather, it arose because of its failure to safely transport the petroleum cargo of Caltex. Seaworthiness is a defense in quasi-delict but not in a breach of contract of carriage or affreightment. In this case, clearly there is no privity of contract between NASCL and Copylandia.

I thus take the position that legal subrogation under Article 2207 does **not** create a "second" obligation (*i.e.*, arising from law) on the part of the tortfeasor to the subrogee that is independent and distinct from the former's obligation arising from quasi-delict to the subrogor (aggrieved insured party). ***There is only one obligation and that is the one arising from quasi-delict***. The rights of the subrogor and the subrogee are identical. In fact, if the subrogor files the complaint for damages against the tortfeasor and is later substituted by the subrogee after payment of the subrogor's insurance claim, the cause of action remains the same because the subrogee simply steps into the shoes of the subrogor.

The insurer's right of subrogation against third persons causing the loss paid by the insurer to the insured arises out of the contract of insurance and is derived from the insured alone.[6] Consequently, the insurer can take nothing by subrogation but **only** the rights of the insured.[7]

This is so because the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer; as subrogee, the insurer, in contemplation of law, stands in the place of the insured and succeeds to whatever rights he may have in the matter.[8] The

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6 44 Am. Jur. 2d, *Extent of right; dependence upon rights of insured*, § 1795, p. 785 (1982).
7 Id.; citations omitted.
8 Id. at 785-786, citations omitted.

cause of action of the insurer against the wrongdoer is the very cause of action of the insured against the wrongdoer such that when the property upon which there is insurance is damaged or destroyed by the negligence of another, the right of action accruing to the injured party is for an indivisible wrong giving rise to a single indivisible cause of action which abides in the insured, through whom the insurer, upon payment of the insurance, must work out its rights.[9] And, any defense which a wrongdoer has against the insured is good against the insurer subrogated to the rights of the insured, including statute of limitations.[10]

The dissent relies on *Fireman's Fund Insurance Company v. Jamila & Company, Inc.*[11] (*Fireman's Fund*). In *Fireman's Fund*, properties of Firestone Tire and Rubber Company of the Philippines (Firestone) valued at ₱11,925.00 were lost allegedly due to the acts of its employees who connived with Jamila & Co., Inc.'s (Jamila) security guard. Fireman's Fund Insurance Company (Fireman's Fund), as insurer, paid to Firestone the amount of the loss, and, claiming subrogation, sued Jamila for reimbursement of what it paid to Firestone.[12] The complaint was dismissed by the lower court because there was no allegation that Jamila consented to the subrogation, and as such, Fireman's Fund had no cause of action against Jamila.[13] It is, thus, understandable, that *Fireman's Fund* only discussed the general principles on the insurer's right of subrogation and did not touch on the issue of prescription.

It is noted that *Fireman's Fund* relied on both Corpus Juris Secundum (C.J.S.) and American Jurisprudence 2d (Am. Jur. 2d). The citations from C.J.S.[14] deal with the Definition and Origin, Nature, and Purpose of Subrogation while those from Am. Jur. 2d[15] deal with Subrogation In General (§ 1820. Insurer's right of subrogation, generally). Also, it is noted that *Fireman's Fund* cited the 1969 edition of Am. Jur. 2d. Under the 1982 edition of Am. Jur. 2d., it is § 1794.[16]

I believe that the subsequent section of C.J.S. on Operation and Effect[17] of subrogation is what is in point in the present case.

Based on C.J.S., subrogation passes all the creditor's rights, privileges, remedies, liens, judgments and mortgages to the subrogee, subject to such limitations and conditions as were binding on the creditor; but the subrogee is not entitled to any greater rights than the creditor.[18]

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9 *Virginia Electric & Power Co. v Carolina Peanut Co.* (CA4 NC), 186 F2d 816, 32 ALR2d 234 cited in 44 Am. Jur. 2d, *Extent of right; dependence upon rights of insured*, § 1795, note 87, p. 786 (1982).

10 Id. at 786; citations omitted.

11 162 Phil. 421 (1976).

12 Id. at 424.

13 Id.

14 83 C.J.S., *Definition*, § 1 and *Origin, Nature, and Purpose of Doctrine*, §2, specifically pp. 576-580.

15 44 Am. Jur. 2d, *Insurer's right of subrogation, generally*, § 1820, specifically pp. 745-746 (1969).

16 44 Am. Jur. 2d, *Insurer's right of subrogation, generally*, § 1794, pp. 782-785 (1982).

17 83 C.J.S., *Operation and Effect*, § 14, pp. 611-614.

18 Id. at 611.

Stated differently, a person entitled to subrogation, the subrogee, must work through the creditor whose rights he claims.[19] The subrogee stands in the shoes of the creditor; and he is entitled to the benefit of all remedies of the creditor and may use all the means which the creditor could employ to enforce payment.[20] The subrogee, however, can enforce only such rights as the creditor could enforce and must exercise such rights under the same conditions and limitations as were binding on the creditor; and, hence, can be subrogated to no greater rights than the one in whose place he is substituted.[21] Thus, if the latter had no rights, the subrogee can have none.[22]

The right asserted by the subrogee is subject to the same infirmities and set-offs as though its original owner were asserting it, and the extent to which the subrogee's recovery will be diminished thereby must be determined just as though the original owner were asserting it.[23]

As a subrogee, the insurer, cannot improve his position or augment his right beyond that of the subrogor, the insured, merely because he sues in his own name without bringing in the subrogor as a party.[24]

Similarly, it is my position that it is § 1795 (Extent of right; dependence upon rights of insured)[25] of Am. Jur. 2d (1982 ed.) or § 1821 (Extent of right; dependence upon rights of insured)[26] of Am. Jur. 2d (1969 ed.) that is relevant in this case.

Based on Am. Jur. 2d (1982 ed.), the insurer's right of subrogation against third persons causing the loss paid by the insurer to the insured does not rest upon any relation of contract or privity between the insurer and such third persons; ***but arises out of the contract of insurance and is derived from the insured alone.***[27] As a consequence, the insurer can take nothing by subrogation but the rights of the insured, and is subrogated to only such rights as the insured possesses.[28]

The principle that proceeds from the foregoing is that the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer because 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.[29] Thus, any defense which a

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19 Id. at 612; citations omitted.
20 Id.; citations omitted.
21 Id. at 612-613; citations omitted.
22 Id. at 613; citations omitted.
23 *Coal Operators Cas. Co. v. U.S. D.C.Pa.*, 76 F.Supp. 681 cited in 83 C.J.S., *Operation and Effect*, § 14, note 19, p. 613.
24 *Coal Operators Casualty Co. v. U.S. D.C.Pa.*, id., cited in 83 C.J.S. *Operation and Effect*, § 14, note 20, id.
25 44 Am. Jur. 2d, pp. 785-787 (1982).
26 44 Am. Jur. 2d, pp. 748-749 (1969).
27 44 Am. Jur. 2d, *Extent of right; dependence upon rights of insured*, § 1795, p. 785 (1982).
28 Id.; citations omitted.
29 Id. at 785-786, citations omitted.

wrongdoer has against the insured is good against the insurer subrogated to the rights of the insured; and the wrongdoer may assert a claim he has against the insured as a counterclaim against the insurer.[30]

It must be noted that the subrogation claim, being derived from the claim of the insured, is subject to same defenses, **including statute of limitations**, as if the action had been sued upon by the insured.[31]

In this respect, *St. Paul Fire Marine Ins. v. Glassing*[32] (*St. Paul II*) is in point. In this case, Ellen Lynn (Lynn) and Gary Glassing (Glassing) were involved in a motor vehicle collision in Bozeman on June 12, 1985. Lynn filed in Gallatin County District Court a personal injury action against Glassing on November 17, 1989 and judgment was entered in Lynn's favor in the net amount of $95,377.92. At the time of the motor vehicle collision, St. Paul Fire Marine Insurance Company (St. Paul) insured Lynn with a policy that provided coverage in the event that Lynn was injured by an underinsured motorist. Allstate Insurance Company (Allstate) insured Glassing against liability resulting from the operation of his motor vehicle up to $50,000 only — the limit of Glassing's liability coverage. On December 15, 1989, Lynn made a demand for underinsured motorist benefits to her insurer, St. Paul, and the latter paid Lynn on or about May 31, 1990 in the amount of $51,461.16, which represented the difference between Glassing's $50,000 policy limits and the judgment with interest to the date of St. Paul's payment. A release was subsequently executed by Lynn in favor of Glassing and Allstate, wherein Lynn acknowledged the receipt of $50,000. On July 24, 1990, St. Paul initiated an action against Glassing to recover the $51,461.16 payment, together with interest and costs it paid to Lynn pursuant to her underinsured motorist coverage. Glassing moved for summary judgment citing the ground that St. Paul's claim was barred by the statute of limitations. The Eighth Judicial District Court of Cascade County (District Court) denied Glassing's motion and granted summary judgment in favor of St. Paul. In reversing the District Court's order, the Supreme Court of Montana ruled:

> **[1]** One issue raised by Glassing is dispositive of this appeal. Glassing contends that St. Paul's suit is barred by the statute of limitations. We agree.
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> In support of his argument, Glassing maintains that the same statute of limitations applies to an action for subrogation as applies to the injured party's claim. Because the accident occurred on June 12, 1985, and St. Paul did not file its action for subrogation until July 24, 1990, Glassing argues that the applicable three year statute of limitations on Lynn's negligence claim had expired, thus barring St. Paul's claim. See. § 27-2-204, MCA.

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30 Id. at 786; citations omitted.

31 *Beedie v. Shelly*, (Mont) 610 P2d 713 cited in 44 Am. Jur. 2d, *Extent of right; dependence upon rights of insured*, § 1795, note 89, p. 786 (1982).

32 269 Mont. 76, 887 P.2d 218, 51 St. Rep. 1437, accessed at <https://www.casemine.com/judgement/us/5914bdb0 add7b049347a3ba4#>.

The District Court however, ruled that St. Paul's right of subrogation did not accrue until its duty to pay was triggered by the rendering of the excess judgment in favor of St. Paul's insured, Lynn. The court concluded that "[p]rior to that time neither Lynn's right to underinsured motorist benefits nor St. Paul's right to subrogation existed." In reaching its conclusion that the statute of limitations had not expired on St. Paul's claim, the District Court determined a distinction existed between uninsured motorist benefits and underinsured motorist benefits. The court concluded that "[u]nderinsured motorist benefits are not triggered until a settlement or judgment has been rendered by which the insured persons damages are not fully compensated." Therefore, the court found that St. Paul's subrogation claim did not accrue or come into existence until November 17, 1989, the date judgment was rendered in Gallatin County. Accordingly, the court concluded that St. Paul's suit was timely filed. However, the court did not state what the applicable statute of limitations would be on St. Paul's suit against Glassing. We conclude that the District Court erred in ruling that St. Paul's claim was not time-barred for two reasons.

First, the court's conclusion that St. Paul's claim accrued on the date of judgment ignores the basic premise of subrogation; that as a subrogee, St. Paul has no independent claim for its damages. It is a well established principle of subrogation law, that subrogation is "the substitution of another person in place of the creditor, so that the person substituted will succeed to the rights of the creditor in relation to the debt or claim." *Skauge v. Mountain States Tel. Tel.* (1977), 172 Mont. 521, 526, 565 P.2d 628, 630.

Additional subrogation principles provide:

> Subrogation confers no greater rights than the subrogor had at the time the surety became subrogated. The subrogated insurer stands in the same position as the subrogor, for one cannot acquire by subrogation what another, whose rights he claims, did not have.

16 Couch on Insurance 2d, § 61:36 (1983).

> The right of subrogation is purely derivative as the insurer succeeds only to the rights of the insured, and no new cause of action is created. In other words, the concept of subrogation merely gives the insurer the right to prosecute the cause of action which the insured possessed against anyone legally responsible for the latter's harm....

16 Couch on Insurance 2d, § 61:37 (1983).

[2] Because an insurer's claim is derived from that of the insured, its claim is subject to the same defenses, including the statute of limitations as though the action were sued upon by the insured. *Beedie v. Shelly* (1980), 187 Mont. 556, 561, 610 P.2d 713, 716. **Accordingly, St. Paul's claim is derivative of Lynn's claim, and her claim accrued on June 12, 1985, the date of the accident.**

Second, we are cited to no authority for the proposition that the principles of subrogation vary with the type of risk insured against. We recognize that there are jurisdictions which have statutes extending the limitation

period for subrogation claims of insurers that have paid damages to their insureds under uninsured or underinsured motorist policy provisions from the date of payment made under the policy. See, *Liberty Mut. Ins. Co. v. Fales* (Cal. 1973) 505 P.2d 213. However, Montana has no such statutory authority extending the limitation date. Whether there should be such a statute is a matter to be determined by the legislature.

Rather, this Court follows the general principles of subrogation which provide:

> **Since the insurer's claim by subrogation is derivative from that of the insured, it is subject to the same statute of limitations as though the cause of action were sue[d] upon by the insured. Consequently, the insurer's action is barred if it sued after expiration of the period allowed for the suing out of tort claims.**

16 Couch on Insurance 2d, § 61:234 (1983).

On appeal, St. Paul argues that the following statement from [*St. Paul Fire Marine Ins. Co. v. Allstate Ins. Co.* (1993 Mont. 47, 847 P.2d 705)] (*St. Paul I*), supports its contention that its right to subrogation arose upon the rendering of the judgment:

> St. Paul's right to subrogation arises from the judgment entered in favor of its insured against the defendant, and that judgment is the result of the defendant's tortious conduct within the State of Montana. *St. Paul I*, 847 P.2d at 707.

We note however, that we made this statement in relation to the jurisdiction question which was before us. We concluded that the District Court had personal jurisdiction over Glassing because of the tortious conduct which occurred in the State of Montana, and that the judgment was entered as a result of this tortious conduct. Therefore, the statement does not support St. Paul's argument that its subrogation rights arose upon judgment.

[3, 4] It is apparent from St. Paul's argument, that St. Paul confuses the accrual of a claim for subrogation, and the attachment of the right of subrogation. An insurer's right to subrogation attaches, by operation of law, upon paying an insured's loss. *Skauge*, 565 P.2d at 630. Accordingly, we held in *St. Paul I*, that "[i]n this case, St. Paul became substituted for its insured as a matter of law when it paid Ellen Lynn pursuant to its insurance policy with her and is entitled to pursue her right to collect the amount of her judgment against the defendant." *St. Paul I*, 847 P.2d at 707. **While St. Paul's right to subrogation arose upon its payment to Lynn, the right to subrogation does not operate to extend the statute of limitations.**

> While a subrogated insurer frequently contends that its action against the third-party tortfeasor who allegedly caused the damage or injury for which the insurer had to recompense its insured did not accrue, and the statute of limitations did not begin to run thereon, until the insurer had made the payments required under its insurance

> contract, courts have held, generally, that such a contention was without merit... ***[T]he statute of limitations begins to run on such actions at the same time that the statute of limitations would have begun to run on the insured's action...against the third-party tortfeasor***.
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> Annotation, "When Does Statute of Limitations Begin to Run upon Action by Subrogated Insurer Against Third-Party Tortfeasor," 91 ALR 3d 844, 850 § 3; See also, *Beedie*, 610 P.2d 716; *Preferred Risk Mut. Ins. Co. v. Vargas* (Ariz.App. 1988), 754 P.2d 346; *Nationwide Mut. Ins. Co. v. State Farm* (N.C.App. 1993), 426 S.E.2d 298.[33]

Borrowing the words of *St. Paul II*, since the right of subrogation is purely derivative, UCPB Gen's claim is derivative of Copylandia's claim; and the latter's claim accrued on **May 9, 2006**, the occurrence of the damage to its various equipment. The 4-year prescriptive period for tort or quasi-delict began to run on UCPB Gen's action at the same time that the same statute of limitations would have begun to run on Copylandia's action against NASCL. Also, since the Philippines has no statutory authority extending the limitation period for subrogation claims of insurers that have paid damages to their insureds similar to the State of Montana, U.S.A., and the insurer's claim is derivative from that of the insured, the insurer's claim is subject to the same 4-year prescriptive period applicable to quasi-delicts as though the cause of action were sued upon by Copylandia. Consequently, the claim of UCPB Gen, as subrogee, had prescribed on **May 9, 2010**.[34]

To reiterate, the cause of action of the insurer against the wrongdoer is the very cause of action of the insured against the wrongdoer such that when the property upon which there is insurance is damaged or destroyed by the negligence of another, the right of action accruing to the injured party is for an indivisible wrong giving rise to a single indivisible cause of action which abides in the insured, through whom the insurer, upon payment of the insurance, must work out its rights.[35]

Thus, American jurisprudence clearly supports the majority view. In subrogation, the insurer literally steps into the shoes of the insured, regardless of their size.

In *Filipino Merchants Insurance Company, Inc. v. Alejandro*[36] (*Filipino Merchants*) where the issue is "whether or not the one-year period within which to file a suit against the carrier and the ship, in case of damage or loss as provided for in the Carriage of Goods by Sea Act [(COGSA)]

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33 Id.

34 REVISED ADMINISTRATIVE CODE OF 1987 (Executive Order No. 292, 1987), Book I, Chapter 8, Section 31 provides that "Year" shall be understood to be twelve calendar months.

35 *Virginia Electric & Power Co. v Carolina Peanut Co.* (CA4 NC), 186 F2d 816, 32 ALR2d 234 cited in 44 Am. Jur. 2d, *Extent of right; dependence upon rights of insured*, § 1795, note 87, p. 786 (1982).

36 229 Phil. 73 (1986).

applies to the insurer of the goods,"[37] the Court ruled that the coverage of the Act includes the insurer of the goods. The Court reasoned out:

> x x x Otherwise, what the Act intends to prohibit after the lapse of the one[-]year prescriptive period can be done indirectly by the shipper or owner of the goods by simply filing a claim against the insurer even after the lapse of one year. This would be the result if we follow the petitioner's argument that the insurer can, at any time, proceed against the carrier and the ship since it is not bound by the time-bar provision. In this situation, the one[-]year limitation will be practically useless. x x x[38]

Applying the *Vector* ruling, the insurer in *Filipino Merchants* would have a 10-year period to be indemnified based on subrogation and not be bound by the one-year prescriptive period under COGSA. If that is allowed, the rights of the insurer against the wrongdoer will rise higher than the rights of the insured against such wrongdoer and the insurer will have greater rights than the one in whose place he is substituted.

Further, the application of the second sentence of Article 2207 would lead to absurdity if the source of the obligation of the wrongdoer or the person who has violated the contract to the aggrieved party is different from the source of his obligation to the subrogee. With respect to prescription, if the aggrieved party files the deficiency suit beyond the 4 years from the occurrence of the quasi-delict, his cause of action would have prescribed. But with respect to the subrogee, it would not be barred provided that the case is filed within 10 years from the payment of the insurance claim. The subrogee's right will then become superior to the right of the aggrieved insured party. The wrongdoer will not be able to raise prescription as defense against the insurer which would otherwise be available to the wrongdoer against the insured party had there been no subrogation. This is in violation of the principle in subrogation that any defense which a wrongdoer has against the insured is good against the insurer subrogated to the rights of the insured.

To recapitulate, to hold that subrogation under Article 2207 of the Civil Code gives rise to a cause of action created by law is erroneous. There are basic principles of subrogation that are violated.

Firstly, such ruling sanctions an unauthorized bifurcation of the singular indivisible obligation of the wrongdoer or tortfeasor, NASCL in this case, to both the injured party-insured, Copylandia, and the insurer, UCPB Gen as it violates a basic principle of subrogation that the right of action accruing to the injured party is for an indivisible wrong giving rise to a single indivisible cause of action which abides in the insured, through whom the insurer, upon payment of the insurance, must work out its rights. If Copylandia's cause of action against NASCL arises from quasi-delict and

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37 Id. at 75.
38 Id. at 79.

UCPB Gen's cause of action against NASCL arises from law, then there will, in effect, be two distinct obligations and causes of action.

Secondly, such ruling violates another basic principle of subrogation that the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer because 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. If UCPB Gen's cause of action prescribes in 10 years while that of Copylandia prescribes in 4 years, then the right of the insurer against the wrongdoer will necessarily rise higher than the right of the insured against such wrongdoer.

Thirdly, if UCPB Gen's cause of action is deemed not to have prescribed despite the fact that Copylandia's cause of action against NASCL had already prescribed, then still another basic principle of subrogation is violated, *i.e.*, the subrogation claim, being derived from the claim of the insured is subject to same defenses, including statute of limitations, as if the action had been sued upon by the injured.

As to the time insurance companies respond to the insurance claim as opposed to the period wherein they run after the wrongdoer, it appears that they respond quickly to the claim of the insured and yet they take considerable time in going after the wrongdoer despite the relatively early settlement of the insurance claim.

In *Vector,* the collision between the M/T Vector and the M/V Doña Paz occurred in the evening of **December 20, 1987** and on July 12, 1988, the respondent insurer therein indemnified Caltex, the insured, for the loss of the petroleum cargo in the full amount of ₱7,455,421.08.[39] But, it was only on March 5, 1992 when the respondent insurer therein filed the complaint against Vector Shipping Corporation, *et al.* to recover the full amount that it paid to Caltex.[40] The respondent insurer therein could have filed the complaint immediately after its payment to Caltex, but it did not.

In the instant case, the water leak that caused the damage to Copylandia's various equipment occurred on **May 9, 2006** and the settlement between the insured and the respondent insurer happened on November 2, 2006. The demand for indemnity against the tortfeasor was made by the respondent insurer, as the subrogee to Copylandia's rights, on May 20, 2010. Clearly, the respondent had ample time to file its complaint for damages against the tortfeasor within the 4-year prescriptive period.

It is a well-known practice among insurance companies to require the insured to file the insurance claim within a short period of time from the occurrence of the event for which the insurance policy was obtained subject

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39 *Vector Shipping Corp. v. American Home Assurance Co.*, supra note 4, at 201.
40 Id. at 202.

to Section 63 of the Insurance Code, which provides that a condition, stipulation or agreement in any policy of insurance limiting the time for commencing an action thereunder to a period less than one year from the time when the cause of action accrues is void. Given the fact that it mainly depends on the insurer when it will settle the claim of the insured, the belated settlement with the insured and filing of the complaint against the wrongdoer should be the insurer's look out. And, equity and justice should not be exploited to excuse the insurer's own fault or negligence in not seasonably enforcing its rights as the subrogee.

Based on the foregoing, the non-dismissal of the complaint based on the 10-year prescriptive period of an action upon an obligation created by law is fundamentally wrong because — to borrow the language of the cited American authorities — the right of action accruing to the injured party that is passed on to the insurer is for an indivisible wrong giving rise to a single indivisible cause of action which abides in the insured, through whom the insurer, upon payment of the insurance, must work out its rights. The complaint for damages should have been dismissed on the ground that it was not seasonably filed within the 4-year prescriptive period under Article 1146(2), an action upon a quasi-delict. It must be recalled that on May 20, 2010 UCPB Gen made an extrajudicial demand upon NASCL. Under Article 1155 of the Civil Code, "[t]he prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor." ***However***, the extrajudicial demand here could not have interrupted the 4-year prescriptive period because the same had already lapsed on **May 9, 2010**, which is 4 years from the occurrence of the damage to the various equipment on **May 9, 2006**.

In view of the guidelines adopted by the Court to transition the abandonment of the *Vector* ruling, I concur in denying the petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court