ATTACHMENT III

Quilez-Velar v. Ox Bodies

2017 TSPR 165

[English Translation]

2017 WL 4125876 (PR), 2017 TSPR 165

Berardo A. QUÍLEZ–VELAR; Marta Bonelli–Cabán; Berardo Quílez Bonelli; Carlos A. Quílez Bonelli, Petitioners
v.
OX BODIES, INC., Respondent.

In the Supreme Court of Puerto Rico
No. CT–2016–10
San Juan, Puerto Rico on August 31, 2017

Attorneys for the Petitioners: José Luis Ubarri García, Esq.; David W. Román Rodríguez, Esq.; Luis R. Mena Ramos, Esq.

Attorneys for the Respondents: Francisco J. Colón Pagán, Esq.; Francisco E. Colón Ramírez, Esq.

Matter: Tort Law—Joint and several debtor may take advantage of the statutory liability limit protecting a municipal codebtor, with regard to the portion of the debt that is attributable to said municipality.

Opinion of the Court issued by ASSOCIATE JUSTICE MDM. RODRÍGUEZ RODRÍGUEZ

*1 We have before us a certified question from the United States Court of Appeals for the First Circuit. This question allows us to analyze the effect of the liability limit protecting a municipality over its joint and several codebtor in an action for damages. As we consider that the certified question presents a novel issue in Puerto Rican law, without the elucidation of which the federal court would be prevented from disposing of the case, we proceed to answer it.

I.

A.

The facts of this case go back to October 1, 2010. On that day, Ms. Maribel Quílez Bonelli, a 28-year-old mother, was driving her car in the far left-hand lane on Ramón Baldorioty de Castro Avenue when she hit a truck property of the City of San Juan. The truck was equipped with a rear bumper designed by the Ox Bodies company. Nevertheless, at the time of the crash, the rear of the truck penetrated the interior of Ms. Quílez Bonelli's vehicle causing her serious injury. Ms. Quílez Bonelli subsequently died as a result of the accident.

Due to the tragedy, Mr. Berardo Quílez Velar, Ms. Marta Bonelli Cabán, Mr. Berardo Quílez Bonelli, and Mr. Carlos Quílez Bonelli, the parents and siblings of Ms. Quílez Bonelli (hereinafter "the plaintiffs"), filed a lawsuit for damages in both state and federal court.

In the Court of First Instance, the plaintiffs filed an amended complaint on November 1, 2011 wherein they claimed negligence and named the Commonwealth of Puerto Rico, the Roads and Transportation Authority, the City of San Juan (hereinafter "the City"), and its insurer, Integrand Assurance Company (hereinafter "Assurance") as defendants. This being the state of things, on May 16, 2014, Assurance deposited $500,000 with the Court of First Instance. This amount represented the maximum amount of the City's liability insurance. Subsequently, the lower court ordered the deposited funds to be delivered to the plaintiffs and dismissed the complaint with regard to the City.

In federal court, the plaintiffs filed an amended complaint against Ox Bodies on March 20, 2013 due to the defective design of the truck's rear bumper. Later, Ox Bodies and its parent company filed a third-party lawsuit against the City of San Juan. On May 16, 2014, the same day that the funds were deposited in state court, the City informed the federal court of the deposit. As a result, the federal court dismissed the complaint with regard to the City on September 4, 2014, with no objection whatsoever from Ox Bodies. Following the trial, the jury concluded that Ox Bodies was liable to the plaintiffs under an absolute liability theory due to the defective design of the rear bumper, and awarded damages totaling $6,000,000. Furthermore, the jury attributed the liability for the damages in the following manner: 20% of the liability was attributed to Ox Bodies, 80% to the City (which was no longer a party to the lawsuit), and 0% to Ms. Quílez Bonelli.

2* Considering this, Magistrate Judge Silvia Carreño Coll determined that Ox Bodies needed only compensate the plaintiffs for the damages

for which it was directly liable, that is, 20% of the total amount, which was equal to $1,200,000. The magistrate judge decided that since the City was protected by a liability limit and the latter had already reached this limit by depositing the funds in state court, Ox Bodies had no right to seek recovery from the City. At the same time, Magistrate Judge Carreño Coll reasoned that if a joint and several defendant loses the right to recover from a codebtor due to the immunity or statutory liability limit of the latter, the former can only be held liable to the plaintiff in the proportion of liability assigned. In order to reach this conclusion, she made an analogy with our case law on codebtor recovery against employers in cases of damages filed by workers against a third party.[1] Thus, she concluded that Ox Bodies could not be held liable for the 80% of liability attributed to the City of San Juan.

Dissatisfied with the decision, the plaintiffs filed an appeal with the United States Court of Appeals for the First Circuit. They argued that although Ox Bodies cannot seek reimbursement against the City, it continues to be a joint and several debtor in the total amount of the damages awarded, that is, $6,000,000. Therefore, it must pay the full amount. The Court of Appeals considered that the issue presented an important question for Puerto Rican Tort Law, and, consequentially, certified the following question for us:

> Was the magistrate judge correct in deciding to limit the damages awarded against Ox Bodies to 1,200,000 and deny the Quílezes the joint and several damages amounting to $6,000,000 awarded by the jury? (our translation)[2]

II.

A.

Interjurisdictional certification allows federal courts and supreme courts of the different states of the United States of America to submit to us questions of Puerto Rican Law the answer to which may determine the result of a legal matter pending before the requesting court. See Muñiz–Olivari v. Steifel Labs., 174 DPR 813, 817 (2008).

As the rule that allows for it provides, interjurisdictional certification has two requirements: that the certified question may determine the result of the legal matter and that there are no clear precedents in our jurisprudence. 4 LPRA sec. 24s (g). In the past, we have refused to answer a certified question where the federal court could ignore our answer and decide said matter under federal grounds that were different from our own. See Pan American Computer Corp. v. Data General Corp., 112 DPR 780 (1982). This is because, in such cases, our decision would be an advisory opinion. *Id.* pg. 794.

***3** In the instant case, our answer to the certified question would put an end to the legal matter pending before the Court of Appeals and there is no precedent in our jurisprudence that would unequivocally decide the case. This being the state of things, we are in a position to consider the interjurisdictional certification filed.

B.

Obligations involving a multitude of debtors may be of a several or of a joint and several nature. While in the case of a several obligation each debtor must answer for his or her part of the debt independently, with a joint and several obligation, each debtor has the duty to satisfy the full amount of the credit had by the creditor. 31 LPRA sec. 3101; see Fraguada Bonilla v. Hosp. Aux. Mutuo, 186 DPR 365, 375 (2012); see also Eduardo Vázquez Bote, *Tratado teórico, práctico y critico de Derecho privado puertorriqueño*, t. V, pg. 136 (1991). Furthermore, in joint and several obligations, a joint and several debtor who has paid the full amount of the debt may later claim from his or her codebtors the portion corresponding to each of these by way of an action for recovery. 31 LPRA sec. 1098; see García v. Gobierno de la Capital, 72 DPR 138 (1951).

Now then, in our legal framework, Art. 1090 of the Civil Code establishes a presumption of severalty, except where otherwise expressly agreed to. 31 LPRA 3101. Nevertheless, jurisprudentially, we have rejected the application of the presumption of severalty to the field of tort law for the sake of protecting the injured party. Thus, in a tort law action, any of the joint tortfeasors is liable for the payment of the indemnity in full. See Maldonado Rivera v. Suárez, 195 DPR 182, 195–96 (2016).

As we have mentioned, in joint and several obligations, each debtor is bound to answer for the full amount of the debt. As such, in order to recover his or her credit, a creditor may file an action against any of the joint and several debtors or against all of them simultaneously. See 31 LPRA sec. 3108. Nevertheless, in the instant case, the joint and several codebtor is a municipality, protected by a liability limit established in the Autonomous Municipalities Law. 21 LPRA sec. 4704. Since the City of San Juan is insured, the applicable statutory liability limit is "the extent of the collectible indemnity actually provided by such insurance with regard to a particular occurrence". 26 LPRA sec. 2004. For this reason, the plaintiffs would be unable to recover from this party an amount greater than that allowed by the liability limit, that is, the maximum amount of the City's insurance.

We have yet to consider if a joint and several codebtor of a municipality can be required to pay the full amount of the debt, regardless of whether the amount of the debt attributed to the municipality exceeds the liability limit protecting the latter.

C.

We have had more than one opportunity to analyze the consequences of a debtor's statutory immunity on a fellow joint and several codebtor.

***4** In the context of the immunity of an employer for workplace accidents, the question was decided more than fifty years ago. In Cortijo Walker v. AFF, 91 DPR 574 (1964), the defendant attempted to file a third-party lawsuit to hold the plaintiff's employer liable for the damages suffered. This, despite the fact that the plaintiff's damages were sustained at the workplace and that, therefore, the employer was immune to a direct claim from the worker due to the Worker's Compensation for Workplace Accidents Law. On that occasion, we concluded that "statutory immunity may not be dissolved through the indirect means of a third-party lawsuit." *Id.* on pg. 582. Therefore, had the final resolution been that the employer was liable for a portion of the damages, it would not have been possible file an action seeking the recovery of what was paid in excess.

Subsequently, faced with a factual situation similar to that in Cortijo Walker, we concluded that the employer whom the defendant was attempting to bring into the case as a third-party defendant, "would not be held liable indirectly as a third-party defendant, nor could the defendant be later reimbursed by the employer as a collaborator in the damages". Viuda de Andino v. AFF, 93 DPR 170 181 (1966). However, in Viuda de Andino, we went even further when we held that, due to the immunity of the employer who collaborated in the damages, the defendant was only obligated to pay damages "in proportion to its own fault and to the extent that it collaborated to produce it". *Id.* on pg. 182. We reiterated said rule the following year in Rosario Crespo v. AFF, 94 DPR 834, 849 (1967).

In this manner, we came to a similar conclusion in relation to intrafamily immunity in the field of tort law established in Art. 1810A of the Civil Code. See 31 LPRA sec. 5150. After wavering for a few decades with regard to the applicable rule in these cases,[3] in Colón Santos v. Coop Seg. Múlt. PR we concluded definitively that:

> [I]n a case where a minor suffers damages due in part to the fault or negligence of their close family circle, it is appropriate to discount the proportion of negligence of said family member from the sum total of the damages awarded to the plaintiff, regardless of whether this means reducing the indemnity of the minor that suffered the damages. Colón Santos v. Coop Seg. Múlt. PR, 173 DPR 170, 184 (2008).

We decided thus because said solution avoids a subsequent recovery action against a family member who jointly caused the damage, which would completely undermine the protection conferred by way of statutory immunity. See *id.* As Professor Álvarez González has commented, the solution we came to in Colón Santos was "correct and rigidly just" as it avoids "the functional equivalent of a lawsuit among members of a nuclear family for the damages suffered by one of them". José J. Álvarez González, *Responsabilidad Civil Extracontractual*, 78 REV. JUR. UPR 457, 467–68 (2009).[4]

***5** First of all, in the cases we have summarized, we prevented a defendant from exercising an action to recover against a joint tortfeasor who was statutorily immune. As we have indicated, allowing an action to recover under those circumstances would practically undermine the immunity conferred by law to the joint tortfeasor who caused the damages. That would be

unacceptable, since it would imply bypassing the strong public policy considerations that led legislators to confer immunity to certain persons.

Second, we reject imputing a joint and several codebtor with the responsibility of paying for a portion of the damages that is attributable to a codebtor who is protected by statutory immunity. If a codebtor is immune due to a law that so prescribes, their portion of the debt should not be a part of the joint and several debt. Likewise, if a codebtor is protected by a liability limit stipulated by law, as in the instant case, then their portion of the debt cannot exceed the established limit.

Finally, we must point out that the logic that underlies all of these cases is explicitly framed in our Civil Code. Art. 1101 lists the exceptions that joint and several debtors may invoke against claims from creditors. The jurisprudence adopting the joint and several rule in tort law cases never discussed this article; nevertheless, it is an essential part of joint and several obligation theory. The cited article reads as follows:

> A joint and several debtor may use against claims by a creditor, all the exceptions arising from the nature of the obligation and those personal to the debtor. Those personally pertaining to the others, may only be employed by the debtor with regard to the share of the debt to which the former may be liable. 31 LPRA sec. 3112.

As the treatise writer Gómez Ligüerre explains with regard to Art. 1148 of the Spanish Civil Code, which is analogous to our Art. 1101, the phrase "share of the debt refers to the internal relationship [among the debtors] and, contrary to the purpose that passive joint and several obligations respond to, one of the codebtors is allowed to raise before the creditor exceptions that are not their own nor arise from the obligation". Carlos Gómez Ligüerre, *Solidaridad y derecho de daños: Los límites de la responsabilidad colectiva*, 69 (2007). As José Puig Brutau reasons:

> We are, of course, dealing with norms guided by public policy criteria, rather than an inflexible derivation of the nature of the joint and several obligation. Furthermore, if it were not so established, the creditor could avoid the effect of the personal exceptions of some debtors by going against any of the other obligated parties. José Puig Brutau, *Fundamentos de Derecho Civil*, t. I, v. II, pgs. 170–71 (3rd ed., 1985).

***6** For example, Vázquez Bote illustrates that "the creditor who entered into an agreement with a minor may elude the special voidability rule by making claims against the remaining debtors ... and the debtor against whom the payment is claimed may refuse to satisfy the proportion for the minor, precisely because he or she is a minor." Eduardo Vázquez Bote, *Tratado teórico, práctico y critico de Derecho privado puertorriqueño* t. V pg. 146 (1991).

While it is true that the cases discussed above do not mention this article, in practice, they applied its postulate to the letter. Immunities or liability limits established by law are personal exceptions or defenses that a debtor may raise. Thus, a debtor may take advantage of the immunity or statutory liability limit of another codebtor in the portion of the debt for which said other party is liable. Therefore, today we hold that a joint and several debtor may make use of the statutory liability limit that protects a municipal codebtor in the portion of the debt that is attributable to this municipality.

III.

In the instant case, due to the liability limit established by law, the plaintiffs were only able to recover up to $500,000 from the City of San Juan, the maximum amount of the actual collectable indemnity provided by the City's insurance. Therefore, before the plaintiffs, the City of San Juan has a personal defense of statutory liability limit. Now then, the amount of $500,000 had already been deposited with the Court of First Instance, and for this reason the plaintiffs were unable to recover additional monies from the City in federal court, and for this reason the case against the City was dismissed. With regard to the joint and several codebtor that remained in the case, Ox Bodies, this party had the option of raising the personal defense of the City as it pertained to the part of the debt for which the City was liable,

that is, eighty percent (80%). And it did so. Therefore, Magistrate Judge Carreño Coll was correct in limiting the final liability of Ox Bodies to $1,200,000, equal to twenty percent (20%) of the damages awarded by the jury.

Judgment will be entered accordingly.

JUDGMENT

For the grounds set forth in the preceding Opinion, which shall be made a part of this Judgment, we hold that Magistrate Judge Carreño Coll was correct in limiting the final liability of Ox Bodies to $1,200,000, equal to twenty percent (20%) of the damages awarded by the jury.

So agrees the Court and is certified by the Clerk of the Supreme Court. Associate Justice Mdm. Pabón Charneco did not intervene. Associate Justice Mr. Estrella Martínez issued a Concurring Opinion.

Juan Ernesto Dávila Rivera

Clerk of the Supreme Court

Concurring opinion issued by ASSOCIATE JUSTICE MR. ESTRELLA MARTÍNEZ

*7 I am in agreement with the ruling issued by this Court in concluding that due to the liability limit established in the Commonwealth of Puerto Rico Autonomous Municipalities Law, *infra*, a joint and several codebtor of a municipality in an action for damages may raise said defense and make use of the limit with regard to the portion of the debt attributable to said municipality. However, in light of the jurisprudential void that exists regarding the application of Article 1101 of the Civil Code, *infra*, I believe it adequate to expound on its effects.

With this in mind, I proceed to set forth the factual and procedural background that gave rise to the issue before us.

I

On October 1, 2010, Ms. Maribel Quílez Bonelli (Ms. Quílez Bonelli) was driving a motor vehicle with her minor child as a passenger. On her way, she hit a truck belonging to the City of San Juan (City), which was stopped. The truck had, on its rear section, a bumper designed by the Ox Bodies, Inc. company (Ox Bodies). When the crash occurred, the bumper penetrated the interior of the vehicle. Five days later, Ms. Quílez Bonelli died due to the injuries sustained in the accident.

As a result of these events, Ms. Quílez Bonelli's family (plaintiffs) filed actions for damages in both state and federal court. Specifically, in the Court of First Instance they sued the Commonwealth of Puerto Rico, the Roads and Transportation Authority, the City and its insurer. For its part, the City sued Ox Bodies as a third-party defendant. Similarly, the plaintiffs sued Ox Bodies in the Federal District Court for the District of Puerto Rico (District Court), since there was diversity of citizenship. The latter party in turn brought in the City and its insurer as third-party defendants.

This being the state of things, the plaintiffs settled and agreed with the City in the Court of First Instance that its insurer would deposit the maximum amount of its public liability coverage, that is, $500,000. The amount deposited was to be distributed among the plaintiffs if the City were to be held liable. Pursuant to this agreement, the lawsuit in state court was dismissed with regard to the City and its insurer, as well as the third-party defendant, Ox Bodies. When the District Court was notified of the deposit with the state court, the federal lawsuit against the City was dismissed. Nevertheless, the action against Ox Bodies remained.

In federal court, the jury awarded $6,000,000 in damages, which it distributed in the following manner: 80% of the liability was attributed to the City and 20% of the liability to Ox Bodies. Despite being a joint and several codebtor, the District Court held that Ox Bodies should only answer for 20% of the amount awarded, that is, $1,200,000. Said forum underscored that, due to the liability limit protecting the City, Ox Bodies was deprived of its right to recover from said entity. As a result, the court decided that Ox Bodies was only bound to indemnify the plaintiffs for the damages it had caused directly. To sustain its decision, the court made an analogy between the limited liability of municipalities and the immunity of employers in claims for damages.

*8 Dissatisfied, the plaintiffs went before the United States Court of Appeals for the First Circuit (Court of Appeals). In essence, they argued that Ox Bodies, like all joint and several codebtors, was liable for the full amount of the debt before its creditor. Similarly, they argued that the internal relationship of the codebtors should not affect the damages awarded to the plaintiffs.[5] For its part, Ox Bodies maintained that it should not be held liable for the full amount of the damages, since it has no right to recover from the City.

The Court of Appeals understood that the issue was unprecedented in Puerto Rican Law, and for this reason it filed an interjurisdictional certification with the following question:

> Was the magistrate judge's decision correct in limiting the damages awarded to the Quílez-Velar family to 1,200,000 corresponding to the percentage of liability attributed to Ox Bodies and denying the joint and several damages amounting to $6,000,000 as determined by the jury?

Having examined the factual situation, we now proceed to set forth the legal framework that is applicable to the issue we consider herein.

II

Autonomous municipalities in Puerto Rico enjoy liability limit in cases of damages. The Commonwealth of Puerto Rico Autonomous Municipalities Law (Autonomous Municipalities Law) specifies that they shall only answer for a maximum of $75,000 per person or $150,000 where damages have been caused to more than one person or when there are several causes of action. The Autonomous Municipalities Law, Law No. 81 of August 30, 1991, as amended, 21 LPRA sec. 4704. However, where a municipality has obtained liability insurance, it shall answer up to the maximum amount of the coverage. Puerto Rico Insurance Code, 26 LPRA sec. 2004.

Recently, we defined the term liability limit. We indicated that it refers to "a limit imposed by the Legislature on the collectible amounts for actions or omissions involving fault or negligence". Rodríguez Figueroa v. Centro de Salud Mario Canales Torresola, decided on April 12, 2017, 2017 TSPR 53, pg. 4. That is, we explained that in the case of limited liability there is a cause of action, but the indemnity for the damages suffered will be limited. Consequentially, this limitation established in the Autonomous Municipalities Law may be raised as a defense against claims from a creditor.

III

A.

As is well known, "[a] person who by an act or omission causes damage to another through fault or negligence shall be obliged to repair the damage so done." PR Civ. Code, Art. 1802, 31 LPRA sec. 5141. The cited article "protects the general duty of diligence necessary for social coexistence". Carlos J. Irizarry Yunqué, *Responsabilidad Civil Extracontractual: Un estudio basado en las decisiones del Tribunal Supremo de Puerto Rico*, 7th ed., 2009, pg. 19 (citing Muñiz–Olivari v. Steifel Labs., 174 DPR 813, 818 (2008). For this reason it has been determined that the obligation to compensate the injured party arises from the damages. Agosto Vázquez v. F.W. Woolworth & Co., 143 DPR 76, 81 (1997).

*9 As it pertains to obligations, it is well known that that where there is more than one debtor, these may be classified as several or joint and several. "In the case of the first, the debt may be divided and each debtor answers only for the corresponding part. In the case of the second, the debt is considered indivisible and each debtor answers equally for the full amount of the debt." Maldonado Rivera v. Suárez, 195 DPR 182, 194 (citation omitted). In this regard, the Puerto Rico Civil Code establishes that where several creditors or debtors concur in an obligation, the latter is presumed to be several. PR Civ. Code, Art. 1090, 31 LPRA sec. 3101. Nevertheless, this Court has held that this principle is inapplicable when it comes to tort law and that, therefore, liability for damages caused is joint and several. Sánchez Rodríguez v. López Jiménez, 118 DPR 701, 705 n. 2 (1987).

In this regard, joint and several liability is based on its usefulness as an instrument with which to satisfy, in the best way possible, the purposes of the relationship from which it is born. In the case of joint and several debtors, that usefulness would be the increased security of the satisfaction of the debt promptly and with the creditor having the ability to choose which debtor is capable of complying in the best way possible. M. Albaladejo, *Comentarios al Código Civil y Compilaciones Forales*, Madrid, Editorial Revista de Derecho, Madrid, Privado

1983, T. XV, Vol. II, pg. 227. It is for these reasons that the main characteristic of joint and several obligations is the transcendence of the actions of each one of the subjects with respect to the other creditors or to the debt. #*Id.*, pg. 258. In other words, the usefulness of joint and several obligations among debtors, that is, passive joint and several obligations, is to make the position of the creditor more secure. This is so because where there are more debtors, each one can be required to answer for the full amount of the debt. Once the creditor has been satisfied, the debtors may settle the matter amongst themselves. M. Albaladejo, *Derecho Civil*, 8th ed., Barcelona, Librería Bosch, 1989, T. II, Vol. I pg. 105.

For the reasons stated above, joint and several obligations imply an external relationship between the creditor and the codebtors, wherein each debtor is answerable for the full amount of the debt before the creditor. Torres Ortiz v. ELA, 136 DPR 556, 563–564 (1994). Similarly, an internal relationship arises among the codebtors that "allows the joint and several debtor who has paid more than what is proportional to claim the corresponding proportions from the remaining codebtors". Szendrey v. Hospicare, Inc., 158 DPR 648, 654 (2003) (citing the PR Civ. Code, Art. 1098, 31 LPRA sec. 3109). This internal relationship is called the "right of recovery, repayment, reimbursement, contribution, or return". J.R. Vélez Torres, *Derecho de Obligaciones, Curso de Derecho Civil* 2nd ed. Rev. San Juan, 1997, pg. 93. Now then, let us examine the effects of Article 1101 of the Civil Code on the issue we have formulated.

B.

***10** The Puerto Rico Civil Code establishes the following in Article 1101:

> A joint and several debtor may use against claims by a creditor, all the exceptions arising from the nature of the obligation and those personal to the debtor. Those personally pertaining to the others, may only be employed by the debtor with regard to the share of the debt to which the former may be liable. 31 LPRA sec. 3112.

This precept is from Article 1148 of the Civil Code of Spain, which shares the same text. By way of these provisions, both jurisdictions contemplate a "well-founded exception to the principal of joint and several obligations". E. Vázquez Bote, *Derecho Civil de Puerto Rico* , San Juan, FAS, Ediciones Jurídicas, 1973, T. III, Vol. I, pg. 159. Treatise writers of Puerto Rican and Spanish Law acknowledge that Article 1101 and Article 1148, respectively, weaken the principles of joint and several obligations that establish that each debtor is answerable for the full amount of the debt to the creditor. "[I]t supposes a deviation from the principle that we are dealing with a joint and several obligation, as the content of the internal relationship surfaces in the external relationship." Albaladejo, *Derecho Civil*, *op. cit.*, pg. 100. Nevertheless, they highlight that "instead of being an inflexible derivation of the nature of the joint and several obligation", owing to public policy criteria, a debtor is allowed to raise defenses had by the other debtors or his own in order to avoid "paying someone else's debt where it is also undue". José Puig Brutau, *Fundamentos de Derecho Civil*, 3rd ed. rev., Barcelona, Bosch, Casa Editorial, S.A., 1985, T. I, Vol. II, pgs. 170–71. The purpose, therefore, is to avoid a restrictive interpretation of joint and several obligations that would lead to a debtor paying a debt "without the possibility of later claiming, whether definitively or temporarily, repayment from a codebtor". J. Castán Tobeñas, *Derecho civil español, común y foral*, Madrid, 17th ed., Ed. Ruis S.A., 2008, T. III, pg. 168.

For these reasons they believe that this "exorbitant effect need not be a part of the typical structure of joint and several obligations among debtors, since no one should be obligated to answer for a nonexistent debt, unless it has been expressly agreed to". A Cañizares Laso, *et. al.*, *Código Civil Comentado*, Navarra, Civitas, Vol. III, T. IV, 2011, pg. 310. What's more, they acknowledge that "the joint and several debtor may use, even externally, as with any debtor, all the defenses available against a claim for an obligation that he has incurred and of which he is the main obligated party". #*Id.*, pg. 311. This would resolve "the old concern of why joint and several debtors must bear and prorate the portion of the common debt that one of them rigorously does not owe insomuch as he can raise an exception for having to make said payment". A. Cristobal Montes, *Excepciones oponibles por el deudor solidario*, 74 Revista de Derecho Privado 863, 874 (1990).

***11** It has been argued that the intention of the Legislature was not to extend the consequences of joint and several obligations to the extreme of preventing the application of personal exceptions. Despite the fact that the purpose of joint and several obligations is to guaranty that the rights of creditors are not reduced and allow them to claim from each debtor

without limitation or condition, it has been pointed out that it may be unlawful, in certain circumstances such as the nullity of the obligation with regard to a debtor, for it to be conserved in full with regard to the remaining debtors. It is to this effect that personal exceptions for debtors have been recognized. Q. Micius Scaevola, *Código Civil Comentado y Concordado Extensamente y Totalmente Revisado y Puesto al día Francisco Ortega Lorca,* 2nd ed., Madrid, Instituto Editorial Reus, 1957, T. XIX, pgs. 880–882. Therefore, "the incapacity of one of the joint and several debtors ... may be alleged by the party lacking capacity to free himself fully from immediate payment; and by another to free himself from the portion of the debt corresponding in the internal relationship–in reality–to the party lacking such capacity." J.L. Lacruz Berdejo, *Elementos de Derecho Civil*, 5th ed. rev., Madrid, Dykinson, 2011, T. II, Vol. I, pg. 43.

Article 1101 does not specify which defenses joint and several codebtors may raise. Furthermore, the difficulty in knowing which specific exceptions have been derived from this article has been acknowledged. J. Caffarena Laporta, *La solidaridad de deudores: Excepciones oponibles por el deudor solidario y modos de extinción de la obligación en la solidaridad pasiva*, Madrid, Editorial Revista de Derecho Privado, 1980, pgs. 1–2. However, the article does specify that debtors may raise the following: (1) exceptions that have been derived from the nature of the obligation; (2) personal exceptions of a debtor who has been sued; and (3) personal exceptions of the other debtors.

Exceptions derived from the nature of the obligation are those that come from the origin of the latter and that arise during its development or that affect the validity thereof. Cañizares Laso, *op. cit.* They refer to "the defenses derived from the content, creation, vicissitudes, and generally, the objective circumstances of the debt". M. Albaladejo, *Comentarios al Código Civil y Compilaciones Forales*, *op. cit.*, pgs. 90–91. Their particular characteristic is that they may be raised by any of the joint and several debtors and they affect the entire group of debtors. M. Albaladejo, *Comentarios al Código Civil y Compilaciones Forales*, *op. cit.*, pg. 394.

In terms of personal exceptions, claims for defect of consent and lack of capacity to enter into agreements are typically referenced. Cañizares Laso, *op. cit.* See also Vélez Torres, *op. cit.*, pg. 91. Nevertheless, personal defenses may be broader and more general:

> ***12** The word 'personal' applied to exceptions that concur singularly with each debtor, does not exclusively and rigorously mean that they refer to the circumstances of his personal capacity or special consent, rather they encompass all those exceptions that in a special way are present in his own debt.
>
> When speaking of personal exceptions, *we mean peculiarities of each partial obligation included* in the joint and several obligation, whether because, even where it is just one obligation, it must, in the end ... be considered divided among the various obligated parties. J.M. Manresa y Navarro, *Comentarios al código civil español*, 6th ed., Madrid, Instituto Editorial Reus, 1967, T. VIII, Vol. I, pgs. 536–537 (emphasis added).

That is, what constitutes a personal defense can be interpreted liberally, always bearing in mind that personal defenses in the name of other debtors only free the debtor using them from the part of the debt corresponding to the debtor to whom the exception personally applies. Cañizares Laso, *op. cit.* Albaladejo maintains that personal exceptions "originate from the particular and distinct relationship between the creditor and each one of the debtors". Albaladejo, *Comentarios al Código Civil y Compilaciones Forales*, *op. cit.*, pgs. 393–394. He also points out that "[t]he codebtors of the holder of the personal exception are not bound to pay the part of the debt that, by virtue of such exception, is extinguished for the benefit of them all." *Id.*, pg. 398.

This Court has not directly addressed Article 1101 of the Civil Code. Nevertheless, recent opinions have shown a tendency toward an evolutionary interpretation of joint and several obligations in the field of tort law that reflects coherence with the use of this article.

Thus, for example, in Fraguada Bonilla v. Hospital Auxilio Mutuo, this Court incorporated *in solidum* joint and several obligations from France and adopted by Spain to our tort law framework as it pertained to the statute of limitations. Fraguada Bonilla v. Hospital Auxilio Mutuo, 186 DPR 365 (2012). Imperfect or *in solidum* joint and several obligations sustain the principal effect that

each of the debtors is answerable to the injured party for the full amount of the debt. #*Id.*, pg. 380 (citing A. Cristóbal Montes, *Mancomunidad o solidaridad en la responsabilidad plural por acto ilícito civil*, Barcelona, Bosch, Casa Editorial, S.A., 1985, pg. 36). However, different from ordinary joint and several obligations, *in solidum* joint and several obligations do not have the secondary effect of representation among the codebtors. Rather they contemplate a sort of autonomy among the debtors because, contrary to a contractual relationship, they are not "encouraged by a common will". #*Id.*, pg. 381 (citing C. Gómez Ligüerre, *Solidaridad y derecho de daños: Los límites de la responsabilidad colectiva*, Navarra, Editorial Aranzadi, S.A., 2007, pg. 99). Consequentially, we held that the party affected by an injury must interrupt the statute of limitations of the cause of action against each on of the joint tortfeasors.

***13** Subsequently, in Maldonado Rivera v. Suárez, we sustained the incorporation of *in solidum* joint and several obligations in establishing that a tortfeasor who has not been included in the action for damages within the statute of limitations cannot later be brought in as a third-party defendant. Maldonado Rivera v. Suárez, 195 DPR 182, 208 (2016). Furthermore, following the logic of Fraguada Bonilla v. Hospital Aux. Mutuo, we concluded that there is also no right to recovery against said party, because it would be unnecessary. An action that has lapsed against one joint and several debtor implies that this party's obligation has been extinguished before the creditor and the remaining tortfeasors. #*Id.*, pg. 210.

Despite the fact that this Court did not mention Article 1101 in its opinions, said article is certainly coherent with these interpretations. As is provided in Article 1101, joint tortfeasors were allowed to raise defenses derived from the nature of the tort obligation—in those cases it was the statute of limitations—in order to reduce the amount of the damages for which they are directly liable. This Court, therefore, favored the evolution of joint and several obligations in order it pursue a "more equitable distribution of the damages and of the risks, avoiding the drastic distinction of the Civil Code obligating 'all' or nothing as it pertained to fault or any other circumstance". J.R. León Alfonso, *La categoría de la obligación in solidum*, Sevilla, Publicaciones de la Universidad de Sevilla, 1978, pg. 103.

It is worth mentioning that the Supreme Court of Spain has in deed acknowledged the defenses that arise from their Article 1148. In a tort law case due to an automobile accident, said supreme forum stated that "each one of the debtors must comply entirely with the indemnity, each joint and several debtor having the option to, in cases such as this one under Art. 1148, ... use all exceptions that may be derived from the nature of the obligation." S. May 7, 1993, No. 3464/1993. That very year, The Supreme Court of Spain acknowledged the lapsing of the statute of limitations as a defense for a joint and several codebtor. S. June 23, 1993, No. 4722/1993.

C.

In Puerto Rico, joint and several obligations have certain exceptions. One of them occurs, for example, where employers who provide their employees with insurance under the Workplace Accidents Compensation System Law cannot be sued for damages. Workplace Accidents Compensation System Law, Law No. 45 of April 18, 1935, 11 LPRA sec. 21. We have sustained this immunity in prohibiting a defendant in an action for damages from suing the employer as a third-party defendant. Cortijo Walker v. AFF, 91 DPR 574, 582 (1964). In line with this, later, we held that the codebtors of an employer who has immunity are only answerable "in proportion to their own fault". Viuda de Andino v. AFF, 93 DPR 170, 182 (1966). See also Rosario Crespo v. AFF, 94 DPR 834, 849 (1967). Therefore, in these cases, there is no need to seek recovery from the employer, because the amount of liability attributable to the employer has been discounted from the indemnity awarded to the injured party.

***14** Another exception to joint and several liability is intrafamily immunity. PR Civ. Code, Art. 1810(A), 31 LPRA sec. 5150. Colón Santos v. Coop Seg. Múlt. PR, 173 DPR 170, 184 (2008). As with employer immunity, in these situations, the amounts awarded for damages are reduced by the percentage attributable to the family member. *Id.* For this reason, joint tortfeasors cannot sue the family member as a third-party defendant or seek recovery from the latter.

In both circumstances, immunity, as an exception to joint and several liability, implies that the injured party will not be indemnified for the full amount of the damages suffered.

The proportion of fault attributed to joint tortfeasors with immunity will not be compensated, since it is discounted from the total amount of the damages awarded. For this reason, joint tortfeasors cannot sue the immune party as a third-party defendant or seek recovery from said party. Immunity, then, constitutes a significant exception to the general principle of joint and several obligations that requires all debtors to answer for the full amount of the debt.

D.

Additionally, we must be advised that Article 1098 of the Puerto Rico Civil Code clearly establishes that the financial insolvency of a joint and several debtor will be absorbed by the remaining codebtors. PR Civ. Code, Art. 1198, 31 LPRA sec. 3109. In cases where a codebtor is financially incapable of paying his share of the damages for liability, his joint and several codebtors shall pay the portion corresponding to the former of the debt prorated among them all. *Id.* Due to the express nature of the provision, financial insolvency cannot be a defense raised by a joint and several codebtor against a claim by the creditor under Article 1101. Albaladejo concurs with this view when he states that "although his portion has been assessed, the debtor has not been freed from his obligation to provide for ... the insolvency of other codebtors." M. Albaladejo, *Derecho Civil*, *op. cit.*, pg. 100. See also Gómez Ligüerre, *op. cit.*, pg. 69.

Now then, it is relevant to underscore that financial insolvency is distinguishable from the limited liability of a municipality. The Legislature made sure to expressly provide that financial insolvency shall not be an impediment for indemnifying a creditor for the damages awarded. In such cases, the remaining codebtors supply the liability of the insolvent codebtor proportionally. As such, "the risk of insolvency is mutually covered". Puig Brutau, *op. cit.*, pg. 173 (citation omitted). In this way, our Legislature provided a remedy so that the risk may be assumed in a proportional manner. In contrast, as we have shown, in the case of the limited liability of municipalities, there is no rule that provides any process whatsoever for the distribution of liability among the joint and several codebtors in these circumstances.

IV

***15** Pursuant to Article 1101 of the Civil Code, recent pronouncements of this Supreme Court, and the interpretations of treatise writers, I conclude that a joint and several codebtor may raise the liability limit protecting another codebtor as a personal defense of the latter for not having to answer for his percentage of the liability. Certainly, a codebtor's liability limit is a peculiarity that arises from one of the partial obligations, which constitutes a personal defense in accordance with Article 1101 of the Civil Code. See Manresa Navarro, *op. cit.*. In this way, we may avoid a scenario where every party who coincides with a municipality is obligated to pay the portion left uncovered due to the liability limit conferred by law to the latter. The effect of allowing this defense is to subtract from the joint and several debt the amount corresponding to the debtor with limited liability. Therefore, as we held in Maldonado Rivera v. Suárez, *supra*, the discussion on recovery would be unnecessary, since the codebtors will not pay in excess of their liability.

Having provided this picture, I am in agreement with what has been provided in the Majority Opinion. The reasoning set forth herein regarding the above-discussed Article 1101 of the Civil Code weighs heavily on my ruling. Secondly, I also share the analogy anchoring the Majority Opinion regarding employer immunity and intrafamily immunity.

V

For the reasons set forth above, it is unquestionable that a municipality's liability limit is a personal defense that may be raised by a joint and several codebtor, pursuant to Article 1101 of the Civil Code. This being so, I am in agreement with the decision issued by this Court.

FOOTNOTES

1 In Law, analogical arguments—an inductive form of formulating arguments—are an indispensable tool for applying the Law. Analogies allow a party or a magistrate judge to sustain that an issue must be addressed/resolved in a certain way because there is another—similar to the former **in essence**—that was addressed/resolved in that manner. Thus, the legal principle or rule applied to the first situation shall be applied equally to the second, due to the essential or material similarities of both cases. Ruggero J. Aldisert, *Logic*

I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

for Lawyers, Chap. 6 (1989). Analogies allow for reasoning based on examples and operates only where a legal vacuum exists with respect to the issue posed in a case. See Orraca López v. ELA, 192 DPR 31 (2014).

2 The certified question, in its original form, reads as follows:

> Was the magistrate judge correct in this case to limit the damages award against Ox Bodies to $1,200,000 and deny Quilez a joint and several damages award of $6,000,000 against Ox Bodies?

3 See Miranda v. ELA, 137 DPR 700 (1994); Molina, Caro v. Dávila, 121 DPR 362 (1988); Ramos Acosta v. Caparra Dairy, 113 DPR 357 (1982); Torres Pérez v. Medina Torres, 113 DPR 72 (1982); Quintana Martínez v. Valentín, 99 DPR 255 (1970).

4 For his part, Professor Bernabe Reifkohl has commented that the correct solution would be to prevent a recovery action against the immune family member, while requiring the defendant to pay the full amount of the damages awarded. See Alberto Bernabe Reifkohl, *Colón Santos v. Cooperativa de Seguros Múltiples y el aparente conflicto entre las doctrinas de la solidaridad y la inmunidad*, 79 REV JUR. UPR 1091 (2010). However, that proposal seems mistaken to us, insomuch as it allows the plaintiff to avoid the statutory immunity of a joint tortfeasor by going against another of the tortfeasors.

5 Note that we are not here tasked with considering the matter of the constitutionality of the act of legislating liability limits for public entities.

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