

**CERTIFIED TRANSLATION**

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TOLIC v. Rodriguez Febles, 2007 TSPR 67 (P.R. Apr. 10, 2007)

C. Finally, we shall consider the last error argued. Petitioner Febles Gordián claims that it was improper to exempt TOLIC from payment of interest from the date on which the minor's funds were consigned until the date when judgment was issued. Her argument is based on the Civil Code provision establishing that an obligation survives as long as the creditor has not accepted the consignment or received an order from the court stating that the consignment has been properly made. Civil Code Art. 1134, 31 L.P.R.A. sec. 3184. *Petitioner is mistaken.*

[16] Consignation is “the legal deposit... of the thing owed. The asset is placed under the power of the judicial authority, which shall retain it and put it at the disposal of the creditor.” (Emphasis removed.) J. Vélez Torres, *Derecho de Obligaciones* [Obligations Law], 2nd rev. ed., San Juan, Programa de Educación Continua, Universidad Interamericana, 1997, p. 186. This concept “results in extinguishing the obligation; and is a form of payment in the absence of the will of the creditor.” R. Bercovitz and Rodríguez Cano, and \*819 E. Valladares Rascón (scholars), in M. Albaladejo, *Comentarios al Código Civil y compilaciones forales* [Commentary on the Civil Code and Statutory Compilations], Madrid, Ed. Edersa, 1991, Art. 1.181, T. XVI, Vol. 1, p. 297.

This concept is ruled by Civil Code Arts. 1130 to 1135, 31 L.P.R.A. secs. 3185 to 3189. While Art. 1130 provides that consignation releases the debtor from liability “when several persons claim a right to collect,” Civil Code Art. 1134 provides that

[o]nce consignation has been properly done, the debtor may request that the court or the judge order the extinguishment of the obligation.

As long as the creditor has not accepted the consignation, or a court order has not issued stating it was properly done, debtor may withdraw the thing or amount deposited, leaving the obligation surviving. 31 L.P.R.A. sec. 3184.

[17] Although this legal provision establishes that the debtor shall not be released from his or her obligation until there is a corrective court order, this does *not* imply that debtor is obligated to pay interest from the time of the consignation until the court order issues. Formal release from the obligation—which arises from the contract—is one thing, while the requirement to pay interest is another. “[S]panish doctrine agrees that the retroactive effectiveness of a properly executed consignation extends to the moment the deposit took place.” (Emphasis in original.) Vélez Torres, ante, p. 189.

[18] The fact that the court *a quo* delayed in ruling that the consignation had been properly done should not give rise to the imposition on debtor of the payment of interest on an amount paid by debtor in accordance with our legal requirements. If, under those circumstances, we were to impose the payment of interest from the date of the consignation, we would be undermining the purpose of Rule 19 of Civil Procedure, 34 L.P.R.A. App. III, which allows for litigation between opposing parties and is one of the most useful instances of the legal concept of consignation. See Civil Code Art. 1130, 31 L.P.R.A. sec. 3180.

[19] What the court order does “is to rule \*820 that consignation has been properly done and recognize the intended effect of release sought by debtor when depositing the thing; hence, it must become effective as of [that] moment.” Velez Torres, ante, p. 189. We thus conclude that, even though debtor’s formal release depends on the court finding that the consignation was properly done, payment of interest as of the consignation date does not apply if it was found, in fact, to have been properly done. We resolve that in cases such as this, where consignation is ruled to be correct, “the effect of payment is retroactive to the date on which the thing was deposited ...” Bercovitz and Rodríguez Cano, and Valladares Rascón, ante, p. 299.

**CERTIFICATION BY TRANSLATOR**

I, HEIDI CAZES, an English-Spanish translator and interpreter, duly certified as a Federal Court Interpreter by the Administrative Office of the United States Courts and by the American Translators Association (ATA), do hereby certify that I have translated the foregoing document and it is, to the best of my knowledge and abilities, a true and accurate rendition of its corresponding Spanish original.

  
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February 9, 2017  
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Date