

J. Y. Interpretation No.349 (June 3, 1994) *

ISSUE: Is the precedent holding that a bona fide transferee of a jointly owned property should nevertheless be bound by the original contract of division or management in respect of such property in violation of the Constitution?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; Article 823 of the Civil Code (民法第八百二十三條) ; Article 43 of the Land Act (土地法第四十三條) ; Precedent T.S.T. No. 1065 (Sup. Ct., 1959) (最高法院四十八年度台上字第一〇六五號判例) .

KEYWORDS:

co-owners (共有人) , severance or separate-management contract (分割或分管契約) , bona fide third parties (善意第三人) , property rights (財產權) , public announcement (公示) . **

HOLDING: Precedent T.S.T. No. 1065 (Sup. Ct., 1959) states that: “Once a separate-management contract of a co-ownership property has been concluded between its co-owners, the sever-

解釋文：最高法院四十八年度台上字第一〇六五號判例，認為「共有人於與其他共有人訂立共有物分割或分管之特約後，縱將其應有部分讓與第三人，其分割或分管契約，對於受讓人仍

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ance or separate-management contract shall remain binding on an assignee even after a co-owner has assigned his/her share of such property to such assignee.” This is indeed necessary to maintain the stability of the legal order. However, if the assignee of the relevant share of the property received no notification of the separate-management contract concluded between the co-owners and ought not to have received such notification, the continued binding of that separate-management contract on the assignee may result in possible unforeseeable detriments to bona fide third parties. This is contrary to the Constitution’s intent of safeguarding the people’s property rights. Hence, with respect to the herein stated category, the abovementioned judgment shall no longer apply. It is also explained herein that, with respect to the question of whether the statutory vacant land of a separately owned building should be “jointly owned and jointly enjoyed” or “jointly owned but with exclusive enjoyment”, and the effect of its assignment, these matters should be dealt with by enacting relevant governing legislation as

繼續存在」，就維持法律秩序之安定性而言，固有其必要，惟應有部分之受讓人若不知悉有分管契約，亦無可得而知之情形，受讓人仍受讓與人所訂分管契約之拘束，有使善意第三人受不測損害之虞，與憲法保障人民財產權之意旨有違，首開判例在此範圍內，嗣後應不再援用。至建築物為區分所有，其法定空地應如何使用，是否共有共用或共有專用，以及該部分讓與之效力如何，應儘速立法加以規範，併此說明。

soon as possible.

REASONING: Legal actions under the Civil Code can be classified as actions in personam and actions in rem. Unless specifically provided by law, the former shall have legal effect on persona certa while the later shall, upon notice being given to a third party through means of public announcement, have legal effect on any third party. Hence, means of public announcement, by delivery for movables and by registration for immovables, are essential conditions for the acquisition, forfeiture and alteration of rights and interests. This is to protect bona fide third parties. In the event that the third party actually received or ought to have received notification of the contract, its terms shall have legal effects on the third party notwithstanding that the contract may be in personam. Precedent T.S.T. No. 1065 (Sup. Ct., 1959) states that: “Once a separate-management contract of a co-ownership property has been concluded between its co-owners, the severance or separate-management contract shall remain binding on an assignee even after a

解釋理由書：民法上之法律行為，有債權行為與物權行為，除法律有特別規定外，前者於特定人間發生法律上之效力，後者於以公示方法使第三人得知悉之狀態下，對任何第三人均發生法律上之效力。故動產以交付為公示方法，不動產以登記為公示方法，而以之作為權利取得、喪失、變更之要件，以保護善意第三人。如其事實為第三人明知或可得而知，縱為債權契約，其契約內容仍非不得對第三人發生法律上之效力。最高法院四十八年度台上字第一〇六五號判例，認為「共有人於與其他共有人訂立共有物分割或分管之特約後，縱將其應有部分讓與第三人，其分割或分管契約，對於受讓人仍繼續存在」，就維持法律秩序之安定性而言，固有其必要，惟應有部分之受讓人若不知悉有分管契約，亦無可得而知之情形，受讓人仍受讓與人所訂分管契約之拘束，有使善意第三人受不測損害之虞，與憲法保障人民財產權之意旨有違，上述判例在此範圍內，嗣後應不再援用。至建築物為區分所有，其法定空地應如何使用，是否共有共用或共有專用，以及該部分讓與之效力如何，應儘速立法加以

co-owner has assigned his/her share of such property to such assignee.” This is indeed necessary to maintain the stability of the legal order. However, if the assignee of the relevant share of the property received no notification of the contract of separate management and ought not? to have received such notification, the continued binding of the separate-management contract between the co-owners on the assignee may result in possible unforeseeable detriments to bona fide third parties. This is contrary to the Constitution’s intent of safeguarding the people’s property rights. Hence, with respect to the herein stated category, the abovementioned judgment shall no longer apply. It is also explained herein that, with respect to the question of whether the statutory vacant land of a separately owned building should be “jointly owned and jointly enjoyed” or “jointly owned but with exclusive enjoyment”, and the effect of its assignment, these matters should be dealt with by enacting relevant governing legislation as soon as possible.

規範，併此說明。

Justice Chih-Peng Lee filed concurring opinion.

Justice Teh-Sheng Chang filed dissenting opinion in part, in which Justice Yu-Ling Yang joined.

Justice Chien-Tsai Cheng filed dissenting opinion.

本號解釋李大法官志鵬提出協同意見書；張大法官特生與楊大法官與齡共同提出部分不同意見書；鄭大法官健才提出不同意見書。