

Is Contract Law Changing?

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Enone Rosas is a lucky lady. First, Ms. Rosas moved to Canada from the Philippines in 1990 and became friends with Mr. and Mrs. Toca. Positive luck but it gets better. Ms. Rosas won the lottery! \$4.163 million to be precise. Generous person that she is, she lent \$600,000 to Mrs. Toca to buy a house.

But when Mrs. Toca was to pay it back a year later, she couldn't (or didn't want to) and so they agreed on "next year". None of this of course was in writing. Just a friendly discussion over some coffee. This pattern went on for 7 years until Ms. Rosas woke up, realized she was being played and decided to sue.

The law, as found by the trial judge, was that the request to extend (and the corresponding agreement to forbear making a claim) involved no consideration for the modification of the loan contract (the time for repayment). It was simply a voluntary abstention from making a claim. That being the case the limitations period had long expired and Ms. Rosas was out of luck.

But here come the horseshoes. Mrs. Rosas is one of the luckiest persons in the world and she took her case to the BC Court of Appeal. No less than the Chief Justice (obviously taken with the clear equity of Mrs. Rosas' position) said this:

"In my view that is not the law, or at least not what the law should be for variations of existing contracts. The time has come to reform the doctrine of consideration as it applies in this context, and modify the pre-existing duty rule, as so many commentators and several courts have suggested. When parties to a contract agree to vary its terms, the variation should be enforceable without fresh consideration, absent duress, unconscionability, or other public policy concerns, which would render an otherwise valid term unenforceable."

Who says that the law can't change? All you need is to be lucky. It remains to be seen if Mrs. Rosas' luck holds and there is no appeal to the Supreme Court of Canada.

<https://goo.gl/7xj9Mp>

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