

102 Phil. 1074

[**G.R. No. L-11143. February 26, 1958**]

ELIZALDE TRADING CORPORATION, PETITIONER, VS. HON. S.C. MOSCOSO, ETC., AND PILAR S. BASILIO, RESPONDENTS.

D E C I S I O N

ENDENCIA, J.:

On February 6, 1951, petitioner filed with the municipal court of Manila a complaint against Pedro Basilio to collect the sum of P1,336.25 representing the unpaid purchase price of merchandise sold to the latter on credit; but while the action was pending¹, Basilio died and proceedings for the settlement of his estate were instituted in the court of first instance of Leyte and docketed there as S.P. No. 409, In Re; Intestate Estate of Pedro Basilio. After proper proceedings, on June 18, 1952, letters of administration was issued to respondent Pilar B. Basilio, widow of the deceased, and on the same date the court entered an order requiring the persons having money claims against the deceased to file them within six months from June 25, 1952; and pursuant to this order, petitioner filed in said special proceedings its claim in the sum of P536.66 representing the balance of the original indebtedness of the deceased Pedro Basilio.

On *August 20, 1952*, respondent administratrix, in her answer, admitted the claim of the herein petitioner and on *August 23, 1952*, the same was approved and allowed by the court. No payment was, however, made, so, upon motion, the lower court ordered the respondent administratrix to sell, within 30 days, the properties of the intestate to pay the claim in question. The respondent administratrix, however, failed again to settle the aforesaid claim, and the petitioner was constrained to file on May 23, 1955, a motion to urge the respondent

administratrix to pay said claim or to sell the properties of the estate if there were no sufficient funds available to satisfy the claim. This motion was considered favorably, but the respondent Judge, in his order of June 4, 1955, granted the respondent administratrix an extended time until June 30 within which to pay petitioner's claim. Again she failed to make payment, hence on December 27, 1955, petitioner filed another motion praying the court to compel the administratrix to settle the claim and to declare her in contempt for her failure to comply with previous orders requiring her to pay the claim in question. Accordingly, on January 9, 1956, respondent Judge required the respondent administratrix to appear before the court and to inform whether she had already paid petitioner's claim and, in case of failure to have done so, to explain why she should not be punished for contempt of court. On January 25, 1956, respondent administratrix filed a reply to the motion for contempt, explaining that her failure to settle the claim in question was not due to her unwillingness but to the impossibility of raising the necessary amount to pay the claim, and asserting at the same time that petitioner Elizalde Trading Corporation "should not press for the collection of its claim of P536.66 in view of the fact that the Teresa Marble Works (formerly Florentine Craft Works) under the management of Mr. Amberti, thru its representative in Tacloban City, Mr. Cagampan, obtained a credit of about P1,000.00 for gasoline, oil, and diesel fuel at the time when the Elizalde Trading Corporation was purchasing surplus barges at Guiwan, Samar. This account has remained unpaid up to now, but unfortunately the receipts for the same had been burned when the establishment of the deceased, Pedro Basilio, was burned. However, the said Elizalde Company knows of this account in view of a letter sent by the deceased to request payment of the same considering that the Florentine Craft Works (Teresa Marble Works) belongs to the said company." And by virtue of these allegations, she submitted that she should not be punished for contempt for the reason that "her failure to satisfy the claims against the estate are due to circumstances beyond her control and not to mere abandonment of duty or negligence." Acting upon this motion, the respondent Judge issued on January 26, 1956, an order which in effect sustained the aforequoted belated counterclaim of the respondent

administratrix, holding therein, among things, the following:

“Considering that the claim of the Elizalde Trading Corporation is subject to a counterclaim by the administratrix in an amount in excess of the said claim, and the claim of the Philippine National Bank is pending resolution by this Court, only the claim of the Caltex is left to be settled without question.”

Thereupon, on February 4, 1956, petitioner filed a motion for reconsideration of the foregoing order, alleging “that the alleged belated counterclaim asserted against the herein petitioner is utterly fictitious and that even assuming, *without admitting*, that the alleged claim of the administratrix against herein claimant actually exists, the failure of the administratrix to allege the same in offset to the claim of herein claimant has *barred* the administratrix’s claim forever pursuant to Section 10 of Rule 87 of the Rules of Court.” On August 4, 1956, respondent Judge denied this motion in an order which reads as follows:

“While it is true that the claim of Elizalde & Co. was approved by the court, thru the Hon. Judge Juan L. Bocar, on August 23, 1952, and the offsetting of claim of the administratrix against that credit has been presented quite late, the Court believes that in the interest of justice and equity and considering that Elizalde & Co. has shown fairness in all its dealings, particularly in cases like the present, where the estate has very few properties and the interested heirs are minors entitled to support an education, it would seem to be part of fairness and equity for the Court to allow the administratrix to have a chance to prove its offsetting claim against Elizalde & Co., since after all the latter is believed to be possessd of their own evidence to disprove it.

'Lawsuits, unlike duels, are not to be won by a rapier's thrust. (Alonso vs. Villamor, 16 Phil. 318, 322). Anything that may preclude a party from presenting with fullness the facts of his case, should be brushed aside, if that can be done without unfairness to the other side, a legitimate desire to take advantage of an opponent's mistake may be legitimate but cannot be encouraged. (Dacanay et al. vs. Lucero, 76 Phil., 139, 42 O. G. 2119-21; Sec. 2, Rule 17)'

Hence

the motion for reconsideration is denied and the court sets for August 25, 1956, the reopening of the Elizalde Claim only to the extent of permitting the administratrix an opportunity to prove her offsetting claim after which, if the same is found groundless, the Court will order her to pay Elizalde & Co. at the earliest practicable date or to dispose of such property of the estate sufficient to pay the same claim."

On August 17, 1956 petitioner filed a motion for reconsideration of this order, but it was denied, hence the filing of the present petition wherein petitioner prays that "a writ of certiorari be issued annulling and setting aside the order of the respondent Judge dated August 4, 1956 and ordering the respondent Administratrix forthwith to pay the petitioner's P536.66 claim which was approved by a final, executory and unassailable order of August 23, 1952, with costs against the respondents."

From the facts above stated it could readily be seen (a) that petitioners claim for P536.86 duly filed in the intestate proceedings of the deceased Pedro Basilio was approved by the lower court on *August 23, 1952*, and since then up to the issuance of the disputed order of *August 4, 1956*, no appeal nor any steps had been taken by the respondent administratrix to have the approval of said claim set aside; (b) that during the intervening time, several orders were issued by the lower court requiring the respondent administratrix to pay said claim,,

but the latter, for one reason or another, was unable to comply with them, which compelled the petitioner to file several petitions praying that the respondent administratrix be declared in contempt; (c) that the order of the court approving the claim in question has become final and was executory before the respondent administratrix asserted on January 25, 1956 a counterclaim consisting of an alleged credit in favor of the intestate estate for the sum of P1,000 for gasoline, oil and diesel fuel furnished, not to petitioner, but to Florentine Craft Works (Teresa Marble Works) ; and (d) that the counterclaim in question refers to an obligation contracted by the Florentine Craft Works or (Teresa Marble Works) and that it was filed out of the time allowed by Section 10 of Rule 87, which provides that the executor or administrator should answer any claim within 5 days after service of copy thereof and that upon his failure to do so, the counterclaim to, or any claim in offset of, creditor's claim shall be barred forever. Obviously, having all these facts in view, the counterclaim presented by the respondent administratrix which gave way to the opening of petitioner's, claim, cannot be validly and legally entertained by the respondent Judge for the simple reason that, at the time of its filing, there was already a final and executory order of the court approving petitioner's claim and said counterclaim was based on an obligation contracted, not by the herein petitioner, but by another person. Respondent administratrix claims, however, that, in equity, her belated counterclaim should be given way, but this contention is clearly untenable under the facts of the case and the law applicable thereto. Certainly, equity cannot be availed of in the present case for, as stated above, petitioner's claim has not been contested by the respondent administratrix—instead, its legality has been admitted when it was submitted to court for approval; the order approving¹ such claim has become final and executory, and the counterclaim refers to an obligation with which petitioner has nothing to do.

Wherefore, the order of the respondent Judge, dated August 4, 1956, is hereby annulled and set aside and the respondent administratrix ordered forthwith to pay petitioner's P536.66 claim, with cost against her.

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Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion and Reyes, J.B.L., JJ., concur.

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