

**[ G. R. No. L-9791. April 28, 1958 ]**

**FERNANDO A. FROILAN, PLAINTIFF AND APPELLANT, VS. PAN ORIENTAL SHIPPING CO., DEFENDANT AND APPELLEE; COMPAÑIA MARITIMA, INTERVENOR AND APPELLEE; LOURDES REYES VDA. DE CAGUIAT, COMMISSIONER AND APPELLEE.**

**D E C I S I O N**

**PARAS, C.J.:**

On February 3, 1951, the plaintiff filed a complaint in the Court of First Instance of Manila against the defendant, Pan Oriental Shipping Co., for the delivery of a ship known as FS-197. On August 6, 1952, the Compañia Maritima filed a complaint in intervention, alleging that it is in possession of and the one operating the ship, having purchased it from the plaintiff. On September 4, 1952, the defendant filed an amended answer to the complaint and to the complaint in intervention, setting up counterclaims against the plaintiff and the intervenor. On April 7, 1954, the defendant filed a motion for reference to a commissioner of the issues of fact involved in its counterclaims. After an opposition had been filed by the plaintiff and the intervenor, the motion for reference was denied. However, upon *ex-parte* motion of the defendant, the lower court in its order of September 3, 1954, appointed Enrique Caguiat as commissioner to examine the accounts involved in the counterclaims. The latter did not notify the plaintiff and the intervenor or their attorneys about the meeting time and place of the parties as regards the examinations of the accounts. On December 1, 1954, the commissioner filed a motion for approval of his fees to which the plaintiff and the intervenor filed their answer alleging that there was no showing whatsoever as to the time, nature and extent of the commissioner's services; that the amount charged is excessive; and that as provided by Rules of Court No. 34, section 13, the compensation of the commissioner shall be taxed as costs against the defeated party and the court not having as yet made any pronouncement on the point, "the motion is premature". The motion was accordingly held in abeyance. On December 21, 1954, the commissioner filed a motion for reconsideration without notice of hearing to the plaintiff and the

intervenor. The court in its order of July 29, 1950, granted *ex-parte* the aforesaid motion and ordered that the amount of P4,670 be paid by the plaintiff and the intervenor in equal shares, as compensation for services rendered by the commissioner. Plaintiff Froilan appeals from the said order.

The appellant assails the validity of the commissioner's proceedings in the examination of the accounts in question, on the ground said proceedings were held without notice to and in the absence of the appellant and the intervenor. It is noteworthy, however, that the order of the lower court appointing the appellee as commissioner solely directed the latter to "examine the long accounts involved in the defendant's first, second and third counterclaims alleged in its answer to the complaint in intervention of the Compañia Maritima and the amended answer to the complaint of appellant Fernando A. Froilan, dated September 4, 1954." For such purpose, and in the absence of a judicial directive to hold hearings, the commissioner did not need the presence of the parties. Section 3, Rule 34, of the Rules of Court, speaking of the authority that may be granted to a commissioner, provides that "the order may specify or limit the powers of the commissioner, and may direct him to report only upon particular issues, to do or perform particular acts, or to receive and report evidence only and may fix the date for beginning and closing the hearings and for the filing of his report." Under this reglementary provision, the commissioner may be required to perform only a particular task, such as the examination of records of accounts without hearings, specially when unnecessary.

The next criticism made by the appellant is that the appellee did not personally make the examination of the accounts in question and prepare the corresponding report, and that his service consisted merely of what the appellee termed "reviewing Mr. Estanislao's work". While personal attention was perhaps preferable or even desirable, the same is not essential or required. The paramount consideration is that the commissioner assumes full responsibility for whatever is submitted to the court.

In granting, however, appellee's motion for reconsideration filed on December 21, 1954, and ordering the appellant and the intervenor to pay P4,670 in equal shares, without notice and hearing, the lower court acted irregularly. In view of the fact that the appellant and the intervenor had previously registered their stand that there was no showing as to the alleged service rendered by the appellee, that the compensation sought was excessive, and that the approval and payment of the commissioner's fees were premature, a hearing became indispensable.

Wherefore, the order appealed from is hereby reversed and the lower court is ordered to set the incident in question for hearing. So ordered without pronouncement as to costs.

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

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