

J. ANTONIO ARANETA TRUSTEE AND APPELLEE, VS. ANTONIO M. PEREZ, JUDICIAL GUARDIAN AND APPELLANT.*G. R. No. L-16185-86. May 31, 1962*

Ponente: CONCEPCION, J.

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These are two (2) incidents of the trusteeship of the minors Benigno, Angela and Antonio, all surnamed Perez y Tuason. The issue in G. R. No. L-16185 is whether or not the trustee, J. Antonio Araneta—hereinafter referred to as the appellee—may be allowed to pay a sum of money to the law firm, Araneta & Araneta, of which he is a member, for services rendered to him, in his aforementioned capacity as such trustee, in several judicial proceedings, whereas G. R. No. L-16186 concerns the question whether the purchase of certain shares of stock made by the appellee for the benefit of the trusteeship merits judicial approval. Both questions were decided by the Court of First Instance of Rizal (Quezon City Branch) in the affirmative. Hence, this appeal by Antonio M. Perez—hereinafter referred to as the appellant—as guardian of the person of said minors.

With respect to G. R. No. L-16185, it appears that the law firm Araneta & Araneta, through its assistant, Atty. Francisco. T. Papa, had rendered services, as counsel for the appellee, in connection with the following:

- The approval of his accounts for January to March, 1956, which were objected to by the appellant. "Said objection was, on October 19, 1956, overruled by the lower court, the action of which was affirmed by this Court in G. R. No. L-11788, on May 16, 1958, on appeal taken by appellant.
- The appellee's accounts for April to June, 1957 which were approved by the lower court on July 13, 1957, despite appellant's objection thereto. Although appellant appealed to the Supreme Court, he, subsequently, withdrew the appeal.
- In 1958, appellant instituted CA-G. R. No. 22810-R of the Court of Appeals for a writ of certiorari and mandamus against the appellee and the lower court, the latter having sustained the action of the appellee in withholding certain sums from the shares of the minors aforementioned in the net income of the trust estate for July to September, 1957, in view of appellant's refusal to reimburse to said estate identical sums received in the form of allowances for the period from April to June, 1957, in excess of the shares of said minors in the net income for that period. After appropriate proceedings, the Court of Appeals rendered a decision on June 25, 1958, dismissing said petition.

The lower court authorized the payment of P5,500.00 for the services thus rendered by Araneta & Araneta, which appellants assails upon the ground that, pursuant to Section 7 of Rule 86 of the Rules of Court:

"When the executor or administrator is an attorney he shall not charge against the estate any professional fees for legal services rendered by him".

that the services above referred to inured to the benefit, not of the trust estate, but of the trustee; that the amount of the award is excessive; and that the lower court should have required the introduction of evidence on the extent of

the services rendered by the aforementioned law firm before making said award.

Appellant's pretense is untenable. Said Section 7 of Rule 86 refers only to "executors or administrators" of the estate of deceased persons, and does not necessarily apply to trustees. It is true that some functions of the former bear a close analogy with those of the latter. Moreover, a trustee, like, an executor or administrator, holds an office of trust, particularly when, as in the case of appellee herein, the trustee acts as such under judicial authority. Hence, generally, the policy set forth in said Section 7 of Rule 86—basically sound and wise as it is—should be applicable to trustees. The duties of executors or administrators are, however, fixed and/or limited by law, whereas those of trustee of an express trust—like that which we have under consideration—are, usually, governed by the intention of the trustor or of the parties, if established by contract (Art. 1441, Civil Code of the Philippines). Besides, the duties of trustees may cover a much wider range than those of executors or administrators of the estate of deceased persons. Again, the application of Section 7 of Rule 86 to all trusteeships without distinction may dissuade deserving persons from accepting the position of trustee and consequently have a deterrent effect upon the establishment of trusts, at a time when a sizeable part of the burden to undertake important and even essential activities in advanced and/or developing communities or states, particularly in the field of education, science and social welfare, is borne by foundations or other similar organizations based upon the principles of trust. We believe it, therefore, to be the better policy to acknowledge the authority of courts of justice to exercise a sound judgment in determining, in the light of the peculiar circumstances obtaining in each case, whether or not a trustee shall be allowed to pay attorney's fees and charge the same against the trust estate, independently of his compensation as a trustee.

In the case at bar, considering that the appellee was merely defending himself in the proceedings that required the services of counsel; that in each case the stand taken by the appellee was upheld by the court; that the will creating the trust and designating the appellee as trustee explicitly grants him the right to collect for his services as such reasonable fees; that, in view of the nature of the relations between the trustor and the trustee, on the one hand, and the trustor and appellant on the other, there can be little doubt but that the trustor would have sanctioned the payment of the attorney's fees involved in this incident; and that it may have been more costly for the trust estate to engage the services of a law firm other than that of Araneta & Araneta, we are not prepared to hold that the lower court has erred in authorizing the payment of said attorney's fees by herein appellee.

For the rest, it is well settled that "a trustee may be indemnified out of the trust estate for his expenses in rendering and proving his accounts and for costs and counsel fees" in connection therewith (54 Am. Jur. 415-416), apart from the fact that the nature of the professional services in question appeared in the records before the lower court and that the amount of P5,500 fixed by the same as compensation for such services is not excessive.

Referring now to G. R. No. L-16186, it appears that from July to September, 1958, the appellee had bought for the trust estate, through a broker (Pedro Nolasco da Silva & Co.), a total of 118 common shares of stock of the Philippine-American Drug Co. at P100 each, and that, upon submission of appellee's accounts for said period, appellant objected to the items of expenses relative to the acquisition of said common shares, upon the ground that the investment therein is "unwise, in that (the operation of) said company has not, to our knowledge, proved profitable and unlawful in that it is actually an act of self-dealing between the trustee and the beneficiaries of the trust", because the former (appellee) is, also, a stockholder of said company. After the introduction of the evidence of both parties, the lower court overruled the objection and approved said accounts.

It is not disputed that appellee holds, in his individual capacity, 199 out of 30,000 common shares of stock of the Philippine-American Drug Co., whereas his children own 270 out of 5,000 preferred shares of stock of the same enterprise. As a consequence, the interest of appellee and his children in said company is not such as to warrant the charge that the purchase of 118 common stocks for the trust estate amounts to self-dealing by the appellee

with himself. What is more, said purchase by the trustee may be considered as an indication that he had displayed in the management of the trust estate the same interest he had in the protection of his own property.

Upon the other hand, it has, also, been established that the book value of each of said 118 common shares of stock, purchased by the trustee at P10G each, is P202.80; that in 1954 the Philippine-American Drug Co. had paid a cash dividend of 6%, aside from declaring a 33-1/3% stock dividend for its common shares; and that 6-1/2% and 4% cash dividends were paid in 1955 and 1957, respectively. Furthermore, the statement of accounts of the company for the years 1954, 1955, 1956 and 1957, satisfied the lower court that the enterprise "is financially stable and sound". Under the circumstances, we cannot say that the investment in question is unwise.

Appellant's allegation to the effect that shares of stock of the San Miguel Brewery pay higher returns, even if true, does not establish his pretense. Whether an investment is good or not does not depend upon the general, abstract possibility of better investments. Again, one factor that should be taken into account is the degree of influence that the investor may have upon the management of the enterprise concerned, which appellee admittedly has in the Philippine-American Drug Co., but which it is not claimed he wields in the San Miguel Brewery Co.

Wherefore, the orders appealed from are hereby affirmed, with costs against the appellant. It is so ordered.

Padilla, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

Bautista Angelo, J., concurs in the result.

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