

INTESTATE ESTATE OF ENCARNACION ELCHICO VDA. DE FERNANDO, DECEASED, NATIVIDAD E. IGNACIO AND LEONOR E. ALMAZAN, ADMINISTRATRICES-APPELLANTS, VS. PAMPANGA BUS COMPANY, INC., CLAI...

G.R. No. L-18936. May 23, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The present case has its roots in the proceedings hereinafter to be recited:

August 29 1951. Pampanga Bus Company, Inc. (referred to herein as Pambusco) lodged its complaint in the Court of First Instance of Manila against two (2) defendants, Valentin Fernando and Encarnacion Elchico Vda. de Fernando. The suit was to collect P105,000.00 upon a contractual obligation.[1]

January 13, 1955. Encarnacion Elchico Vda. de Fernando died. By this time, Pambusco in the foregoing civil case had already presented its evidence and submitted its case.

March 25, 1955. Intestate proceedings were filed.[2] Notice to the estate's creditors was given for them to file their claims within six (6) months from this date, the first publication of the notice.

April 16, 1955. On Pambusco's motion, the court in the civil case ordered Jose Nicolas, then administrator, to substitute for the deceased Encarnacion Elchico Vda. de Fernando as one of the defendants. No objection to this order was registered.

July 15, 1955. Pambusco amended its complaint in the civil case, naming therein administrator Jose Nicolas and original defendant Valentin Fernando, as defendants. The court, without objection, admitted this amended complaint on August 27, 1955.

Jose Nicolas, as such administrator, filed an amended answer with counterclaim against Pambusco. The date of filing said answer is not of record. In due course, Nicolas presented his evidence.

December 11 1958. After trial on the merits, the Court of First Instance of Manila rendered judgment in the civil case (Civil Case 14576), as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter to pay the former the sum of NINETY THREE THOUSAND PESOS (P93,000.00) together with the costs of these proceedings. Defendants' counter-claim is hereby dismissed."

The two defendants appealed.

May 28, 1960. The Court of Appeals affirmed the judgment, thus -

"As plaintiff's complaint is well founded and meritorious and the evidence of record justify the award of P93,000.00 in its favor, it stands to reason that defendants' counterclaims were correctly dismissed.

WHEREFORE, the judgment appealed from is hereby affirmed, without pronouncement as to costs."[3]

Both defendants appealed by certiorari to this Court. Valentin Fernando's appeal[4] was dismissed for having been filed out of time. The appeal of the estate of Encarnacion Elchico Vda. de Fernando[5], raising issues of fact, was likewise dismissed.

February 25, 1959. We go back to Special Proceedings 25256, Intestate Estate of Encarnacion Elchico Vda. de Fernando. On this day, while defendants in Civil Case 14576 were perfecting their appeal from the judgment of the Court of First Instance, Pambusco registered its "contingent" claim in these special proceedings - for whatever money judgment may be rendered in its favor in the civil suit.

January 25, 1961. The judgment in the civil case having reached finality, Pambusco moved in the intestate proceedings that the heirs and/or the present joint administratrices, Natividad E. Ignacio and Leonor E. Almazan, be ordered to pay P46,500.00, the share of the deceased in the judgment debt.

The administratrices opposed. Ground: Pambusco's claim is time-barred.

March 13, 1961. Resolving Pambusco's motion, the probate court (in Sp. Proc. 25256) issued an order, the dispositive part of which is as follows:

"WHEREFORE, the Court hereby allows said amount of P46, 500.00 to be paid by the heirs and/or the joint administratrices; but no payment thereof shall be made until after the administratrices shall have informed the Court in writing as to the existence of other unsettled money claims against the estate and of the sufficiency of the assets available for payment of all the debts.

In harmony with the foregoing, the Court hereby orders said administratrices to inform the Court, within ten (10) days from the notice of this order, of the other unsettled money claims, together with the amount of each, and of the sufficiency or insufficiency of the assets available for payment of all the debts."

By order of May 24, 1961, the probate court denied the motion to reconsider the foregoing order.

The administratrices came to this Court on appeal.

Given the facts just recited, was Pambusco's claim properly admitted by the probate court?

It will be remembered that at the time Encarnacion Elchico Vda. de Fernando died, the civil case against her and the other defendant Valentin Fernando had not yet been decided by the Court of First Instance of Manila. That case, however, was prosecuted - with the assent of the administrator of her estate - to final conclusion.

1. This situation brings to the fore a consideration of Section 21, Rule 3 of the Rules of Court,[6] which reads:

"SEC. 21. Where claim does not survive. - When the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules."

The philosophy behind the rule which provides for the dismissal of the civil case is that, upon the death of a defendant, all money claims should be filed in the testate or intestate proceedings "to avoid useless duplicity of procedure." [7] Obviously, the legal precept just quoted is procedural in nature. It outlines the method by which an action for re-recovery of money, debt or interest may continue, upon the terms there-in prescribed. Whether the original suit for the recovery of money - as here - proceeds to its conclusion, or is dismissed and the claim covered thereby filed with the probate court, one thing is certain: no substantial rights of the parties are prejudiced.

But is there justification for the civil case to go on in spite of the death of Encarnacion Elchico Vda. de Fernando "before final judgment in the Court of First Instance?"

2. At the time of the death of defendant Encarnacion Elchico Vda. de Fernando, plaintiff Pambusco had already closed its evidence and submitted its case. Her administrator substituted. By this substitution, the estate had notice of the claim. The estate was thus represented. The administrator did not complain of the substitution. At no time did the estate of the deceased impugn the authority of the regular courts to determine the civil case. Much less did it seek abatement of the civil suit. On the contrary, its administrator took active steps to protect the interests of the estate. He joined issue with plaintiff. He filed an amended answer. He counterclaimed. He went to trial. Defeated in the Court of First Instance, he appealed to the Court of Appeals. He even elevated that civil case to this Court. Now that the judgment has become final, the estate cannot be heard to say that said judgment - reached after a full dress trial on the merits - will now go for naught. The estate has thus waived its right to have Pambusco's claim re-litigated in the estate proceedings. For, though presentment of probate claims is imperative, it is generally understood that it may be waived by the estate's representative.[8] And, waiver is to be determined from the administrator's "acts and conduct." [9] Certainly, the administrator's failure to plead the statute of nonclaims, his active participation, and resistance to plaintiff's claim, in the civil suit, amount to such waiver.[10]

3. Courts are loathe to overturn a final judgment. Judicial proceedings are entitled to respect. Non *quieta movere*. [11] Plaintiff's claim has passed the test in three courts of justice: the Court of First Instance, the Court of Appeals and this Court. The judgment in plaintiff's favor should be enforced. Appellants' technical objection - after judgment had become final in the civil case - that plaintiff's claim should have been litigated in the probate court does not impair the validity of said judgment. For, such objection does not go into the court's jurisdiction over the subject matter.

In *Laserna vs. Altavas*, 68 Phil. 703, suit was started by Jose Altavas against Jose Laserna Paro to recover P4,500.00 as attorney's fees. The Court of First Instance decided in plaintiff's favor. During the pendency of Laserna's appeal in this Court, he died. Aristona Laserna, the administratrix of Laserna's estate, substituted. This Court affirmed the judgment. Altavas subsequently filed in the estate proceedings a motion to direct the administratrix to pay the judgment for P4,500.00 in his favor. The court granted this motion. On appeal, the administratrix urged that Altavas' claim "was definitely barred by the statute of nonclaim," because of his failure "to present it before the committee on claims and appraisal." [12] This Court there stated - [13]

"x x x we are of the opinion and so hold that, upon the facts and circumstances of the present case, the claim of Jose Altavas, although it did not survive the deceased, need not have to be presented before the committee on claims and appraisal principally because that claim is already an adjudicated claim by final pronouncement by this Court in G. R. No. 40038. To countenance appellant's theory would be to convert a claim duly passed upon and determined not only by the Court of First Instance but by this Court into a contested claim, once again, x x x and 'obliging a creditor whose claim had already been passed upon by the Court to submit himself to the committee on claims and to pass over again through the endless process of presenting his evidence which he had already done.' x x x It also appears that the substitution of the defendant in civil case No. 2961, for the recovery of attorney's fees, was effected at the instance of the defendant and appellant herein, Aristona Laserna. She had an opportunity to contest that claim, and when her contention was overruled she did not impugn the jurisdiction of the Supreme Court. Neither does it appear that during the pendency of the appeal in the Supreme Court she moved for the abatement or suspension of the proceedings because of the provisions of sections 119, 700 and 703 of the Code of Civil Procedure. Under the circumstances it is unjust to defeat the claim of the appellee and to hold that it has been barred by the statute of nonclaim." [14]

4. Of course, it is correct to say that upon the demise of a defendant in a civil action planted on a claim which does not survive, such claim should be presented to the probate court for allowance, if death occurs before final judgment in the Court of First Instance. But, procedural niceties aside, the revival of the civil action against the administrator, the decedent's representative, "is generally considered equivalent to presentation" of such claim in the probate court, [15] and "dispenses with the actual presentation of the claim." [16] The soundness of this proposition commands assent. Because, the administrator represents the deceased's estate itself, is an *alter ego*

of the heirs. More than this, he is an officer of the probate court.[17] In the circumstances, presentment of Pambusco's 1959 claim *ad abundantiorum cautelam* was at best reduced to a mere formality.

5. It matters not that Pambusco's said claim was filed with the probate court without the six-month period from March 25, 1955, set forth in the notice to creditors. For, Section 2, Rule 86, permits acceptance of such belated claims. Says Section 2:[18]

"SEC. 2. Time within which claims shall be filed. - In the notice provided in the preceding section, the court shall state the time for the filing of claims against the estate, which shall not be more than twelve (12) nor less than six (6) months after the date of the first publication of the notice. However, at any time before an order of distribution is entered, on application of a creditor who has failed to file his claim within the time previously limited, the court may, for cause shown and on such terms as are equitable, allow such claim to be filed within a time not exceeding one (1) month."

Here, the claim was filed in the probate court on February 25, 1959, while the defendants in the civil case were still perfecting their appeal therein. The record does not show that the administrator objected thereto upon the ground that it was filed out of time. The pendency of that case, we are persuaded to say, is a good excuse for tardiness in the filing of the claim.[19] And, the order of final distribution is still to be given.

Besides, the order of the lower court of March 13, 1961 allowing payment of appellee's claim "impliedly granted said appellee an extension of time within which to file said claim." [20] The probate court's discretion has not been abused. It should not be disturbed.[21]

FOR THE REASONS GIVEN, we vote to affirm the orders of the lower court of March 13, 1961 and May 24, 1961, under review. Costs against appellants.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Castro, JJ., concur.

[1] Civil Case No. 14576, Court of First Instance of Manila.

[2] Special Proceedings 25256, Court of First Instance of Manila, entitled "Intestate Estate of Encarnacion Elchico Vda. de Fernando, deceased," - the present case.

[3] GA-G.R. No. 24458-R.

[4] G. R. No. L-17184.

[5] G. R. No. L-17100.

[6] A reproduction of Section 21, Rule 3 of the 1940 Rules of Court.

[7] Moran, Comments on the Rules of Court, Vol. I, 1963 ed., pp. 180-181.

[8] 21 Am. Jur., p. 578; 34 C.J.S., pp. 679-680; 34 A.L.R., pp. 393-395.

[9] 21 Am. Jur., p. 618.

[10] 34 C.J.S., p. 680.

[11] *Banco-Español Filipino vs. Palanca*, 37 Phil. 921, 942.

[12] The committee on claims and appraisal has been abolished. Money claims are now presented directly to the

court.

[13] At pp. 706-707; emphasis supplied.

[14] The Code of Civil Procedure (Act 190) provides:

"SEC. 119. Death of party. - In case a party to an action dies while the action is pending, the action shall not abate by reason thereof, but the court on motion may allow the action or proceeding to be continued by or against his executor, administrator, or other legal representative, and the judgment, if it be for the payment of costs and against the executor, administrator, or other legal representative, shall be that he pay in due course of administration: Provided, nevertheless, That if the action is for the recovery of money, debt, or damages against the deceased, it shall be discontinued, and the claim thereafter be prosecuted as provided in section six hundred and eighty-six."

"SEC. 686. Committee to be sworn and may administer oaths. - The committee appointed to appraise the estate and to allow claims as hereinbefore provided, shall act under oath, and may administer oaths to parties and witnesses upon the trial of questions before them. They may try and decide upon claims, which by law survive against executors or administrators, except claims for the possession of or title to real estate; and may examine and allow claims at their present value, which are payable at a future day, although such claims are payable in specific articles; and they may set off demands in favor of the estate against demands against the estate, and determine the balance due either way."

"SEC. 700. Suits pending against the estate to be discontinued. - All actions commenced against the deceased persons, for the recovery of money, debt, or damages, and pending at the time the committee are appointed, shall be discontinued, and the property, if any, therein attached, shall be discharged from the attachment, and the claim embraced in such action may be presented to the committee, who shall allow the party prevailing the costs of such action to the time of its discontinuance."

"SEC. 703. Certain actions survive. - Actions to recover the title or possession of real estate, buildings, or any interest therein, actions to recover damages for an injury to person or property, real or personal, and actions to recover the possession of specific articles of personal property, shall survive, and may be commenced and prosecuted by or against the executor or administrator; but all other actions commenced against the deceased before his death shall be discontinued, and the claims therein involved presented before the committee as herein provided."

[15] 21 Am. Jur. 578; emphasis supplied.

[16] 34 C.J.S., p. 160; emphasis supplied.

[17] Lat vs. Court of Appeals, L-17591, May 30, 1962.

[18] Which was formerly Section 2 of Rule 87.

[19] In pari materia: De Rama vs. Palileo, L-18935, February 26, 1965.

[20] Quisumbing vs. Guison, 76 Phil. 730, 733.

[21] Id., at p. 735, citing In Re Estate of Tiangco, 39 Phil. 967, 968.

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