

**MAXIMINA TAN, ADMINISTRATRIX OF THE PROPERTY OF THE
DECEASED GO BUNG KIU, PLAINTIFF AND APPELLEE, VS. GO
CHIONG LEE, TIO LIOK, ANG CHANGCO AND MANUEL GO TIANUY,
DEFENDANTS AND A...**

G.R. No. L. 21969. September 25, 1924

Ponente: MALCOLM, J.

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MALCOLM, J.:

In this action which arose out of the proceedings relating to the estate of the deceased Go Bung Kiu, the plaintiff, Maximina Tan, the present administratrix of the estate, seeks to recover from the defendant, Go Chiong Lee, the administrator whom the plaintiff succeeded, and the defendants Tio Liok, Ang Changco, and Manuel Go Tianuy, the bondsmen of Go Chiong Lee, on four causes of action, amounts totalling P54,700.39. On the trial court's awarding the plaintiff the sum of P42,849.08, but limiting the liability of the sureties to P30,000, the defendants appealed.

UNDISPUTED FACTS

The undisputed facts in this case may properly serve as its background.

During the lifetime of the deceased Go Bung Kiu, Go Chiong Lee was his encargado. Go Bung Kiu died in China on April 15, 1920. On April 26, 1920, Go Chiong Lee was appointed special administrator of the estate, with Tio Liok, Ang Changco, and Manuel Go Tianuy as sureties on his bond in the sum of P30,000. On May 25, 1920, Go Chiong Lee's status with reference to the estate was changed to that of administrator. On the same date, Go Chiong Lee filed a motion in which he prayed that he be allowed to operate two stores belonging to the estate, one in the City of Cebu and the other in the municipality of Toledo, Cebu. The court granted the administrator the authority which he asked, but on the original copy of the order, the judge added in ink the following words: "Se exige como condici6n de continuar dicho poder concedido al administrador su informe por escrito que debe presentarse el primero de julio y de cada mes siguiente." Another bond also in the amount of P30,000 and with the same sureties was filed by the administrator, and letters of administration were issued in his favor. Go Chiong Lee continued to discharge his duties as administrator until he was relieved by Maximina Tan on October 28, 1921. During this period, the administrator filed one report covering the period from May 26, 1920, to September 30, 1920, another report covering the period from October 1, 1920, to July 31, 1921, and still a third and final report.

The committee on claims rendered its report on June 2, 1921, admitting as proved, claims amounting to P69,029.91.

One month later, the court issued an order of the following tenor:

"The administrator is hereby ordered immediately to pay out of the funds of the estate of the deceased Go Bung Kiu, under administration, to each and everyone of the persons mentioned in the report of the committee on

claims, attached to the record at pages 86 and 87, the whole amount appearing therein to have been allowed by said committee without any preference either as to the amount, or as to the time of payment between the claims allowed."

Responding to the report of the committee on claims and the order of the court, the administrator informed the court on July 19, 1921, that he had paid the creditors of the estate P16,700.39. He explained how the payments were made, in the following words:

"The administrator desires to state that the payments above specified were made slowly, as the funds in his possession permitted them and as the creditors came to make collection, without preference of any kind. These last weeks, he has not been able to make any payment; and this was due to the fact that the debtors of the estate, who are many and will be able to pay when the market shall improve, have not made any payment, although several demands were made upon them by the administrator, and also to the fact that two establishments in Cebu and Toledo, especially the latter, hardly make any sales, the administrator having been compelled to close that in Toledo and to economize in the expenses of the one in Cebu to prevent losses."

As further undisputed facts there should be appended to the foregoing narration of events certain figures having to do with the financial situation of the estate.

The inventory of the estate made by the administrator showed the value of the merchandise on hand at the time of the death of the deceased to be P39,281.57, and the outstanding credits to be P61,534.74, or a combined gross value of P100,816.31. But according to the public accountant R. C. Pangalinan, the estate was worth on May 26, 1920, when Go Chiong Lee became administrator P28,467.51, while it was worth on October 25, 1921, when he ceased to be administrator P8,693.76, or a loss of P19,773.75. The debts of the estate allowed by the commissioner on claims reached to P69,099.91. Sixteen thousand seven hundred pesos and thirty-nine centavos were distributed among the creditors by the administrator, while presumably the remaining debts have not been cancelled. The last report made by the administrator discloses, however, that there may be P21,009.77 on hand which can be used to satisfy the claimants. The present administratrix is running the estate with apparently profitable results.

As further elucidative of the situation, we offer the following table:

Cause of
Action

`Amount
claimed by
plaintiff

Amount
allowed by
trial judge

Errors assigned by
defendants-appellants

Results arrived at by
appellate court and later
explained

I

P10,000.00

P1,401.50

I, II, III, IV,
and V.

Claim disallowed.

Errors held to be taken

II

8,000.00

6,375.00

VI, VII, VIII,
and IX.

Claimed allowed.

Errors held not to be
well taken

III

20,000.00

18,372.19

I, II, III, IV,
and V.

Claim dissallowed

Errors held not to be
well taken

IV

16,700.39

16,700.39

X, XI, and XII.

Claim dissallowed

Errors held not to be
well taken

Totals..

54,700.39

42,849.08

DISPUTED FACTS

Coming now to the disputed points, we resolve them in order.

First and third causes of action, in relation with errors I, II, III, IV, and V.—At this point, it is well to recall that presumably the estate lost over P19,000 during the time when it was administered by Go Chiong Lee, and that on the first and third causes of action the trial judge found with the plaintiff in approximately an amount which covered the losses. The basis for this finding was, first, the lack of authority on the part of Go Chiong Lee as administrator to run the two stores belonging to the estate of the deceased, and second, the failure of Go Chiong Lee to render the monthly reports made a condition of his appointment as administrator.

The permission to operate the stores was granted to Go Chiong Lee on the same date when he was relieved as special administrator and appointed "administrador definitivo" of the estate. He proceeded to act under such authority for over a year without being challenged by anyone. It would now be preposterous to suppose that the power to run the stores actually granted by the trial judge continued merely for an infinitesimal moment of time on May 25, 1920, between the precise moment when Go Chiong Lee acted under it as special administrator, and the succeeding moment when he became the administrator. The only reasonable deduction is that the powers of the special administrator having ceased, and that at the same time that they ceased permission was given to operate the stores, this authority was intended for the administrator, or if intended for the special administrator, was transmitted to the general administrator as soon as he was appointed.

That the attorney of the defendant Go Chiong Lee had knowledge of the addition to the order of the court naming Go Chiong Lee administrator, by which the latter was bound to render written monthly reports of his administration, is established, but that subsequently the court tacitly modified its order, is likewise disclosed by the record. The administrator was repeatedly enjoined to submit accounts without specifying monthly accounts. On three occasions the administrator rendered his accounts without protest from any source.

That monthly reports would have possessed any particular virtue over the reports actually submitted, to place the court on its guard and thus to protect the estate from losses, is hardly plausible. On the contrary, that the losses sustained by the estate resulted from the risk necessarily attending the operation of the two stores, is a much more reasonable assumption. At least the only testimony refuting that of the former administrator comes from one Vidal Reynes, a tailor by profession, and is not at all impressive.

The standard of responsibility of the administrator is best measured as In essence the responsibility of a bailee. Like any bailee, he must pursue his discretion honestly and in good faith, or he will become personally liable, to those who are interested in the estate, for waste, conversion, or embezzlement. But where an administrator, entrusted with the carrying on of an estate, acts in good faith and in accordance with the usual rules and methods obtaining in such business, he will not be held liable for losses incurred. (Schouler on Wills, Executors and Administrators, Chapter III; Allen and Hill vs. Shanks [1891], 90 Tenn., 359.)

We find that the personal responsibility of the former administrator and the sureties on his bond for losses incurred by the estate during his administration, has not been proved.

Second cause of action, in relation with errors VI, VII, VIII, and IX.—On this cause of action, the plaintiff sought to recover the value of 850 sacks of corn which Go Chiong Lee, it is said, failed to inventory. Related to the point, are legal provisions providing that the administrator who has qualified shall, within three months after his appointment, return to the court a true inventory of the real estate and of the goods, chattels, rights, and credits of the deceased, which come into his possession or knowledge, and that the administrator shall be chargeable in his account with the goods, chattels, rights, and credits of the deceased, which come into his possession. (Code of Civil Procedure, sees. 661, 662, 668, 673.) The administrator is accountable on his bond along with the sureties for the performance of these legal obligations.

The issue is squarely one of fact, and as is customary in such cases, we follow the findings of the trial court if proof to substantiate such findings appears in the record. Here, such proof exists, which means that the judgment appealed from must be affirmed in this respect.

Fourth cause of action, in relation with errors X, XI, and XII.—The law provides how the debts of the estate shall be paid, and how subsequent to the return of the report of the committee on claims, the court shall order the payment of the debts and the distribution of the assets. (Code of Civil Procedure, Chapter XXXVIII, especially sec. 739.) The committee on claims did in this case make such a report, showing the debts to come to P69,099.91. The court did decree payment of the debts in the order which is hereinbefore quoted. And the defendant did attempt to comply with the order as appears from his report likewise hereinbefore quoted in part. The anomaly, however, is that, while some of the creditors have been paid entirely and others partially, some of them received absolutely nothing on account of the hit and miss method followed by the administrator.

The general rule is that a personal representative will be protected in the payment of a claim which has been duly allowed or ordered paid by the court, although it should not have been paid in full, unless it is made to appear that such allowance of the claim, or order for the payment thereof, was obtained through his collusion or bad faith. (24 C. J., 452; *Hancock vs. Chapman* [1916], 170 Ky., 99; *Thomson vs. Taylor* [1877], 71 N. Y., 217.)

Keeping the conceded facts and the legal principle in mind, we have read many times the order of the trial court relating to the distribution of the assets among the creditors and are still left with the impression that the administrator, although unwisely, attempted to follow the order to the best of his ability. Moreover, it is not at all certain but that the estate will finally show enough on the profit side of the ledger either to pay all of the creditors to the full extent of their claims, or to give to most of the creditors who have not been paid a proportion similar to that of the creditors who have been paid. In these same proceedings, the administratrix on her own motion, or the creditors at their initiative, may recover the excess imprudently paid out to certain creditors. (2 *Schouler on Wills, Executors, and Administrators*, pp. 1511, 1512.)

For all the foregoing, the judgment is modified to the extent that the plaintiff shall only have and recover from the defendants jointly and severally the amount of P6,375, with legal interest from the date when the complaint was presented. Without costs. So ordered.

Johnson, Street, Avancena, Villamor, Ostrand, and Romualdez, JJ., concur.

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