

**JOHN D. SINGLETON, AS GUARDIAN OF THE PROPERTY OF THE
INCOMPETENT WALTER E. HICKS, PLAINTIFF AND APPELLANT VS.
THE PHILIPPINE TRUST COMPANY, DEFENDANT AND APPELLEE.**

G.R. No. L-7555. May 18, 1956

Ponente: PADILLA, J.

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PADILLA, J.:

On 28 March 1941, Walter E. Hicks, then a resident of Manila, and the Philippine Trust Company, a domestic corporation, entered into a trust agreement whereby, for and in consideration of the trust assumed by the trustee, the Philippine Trust Company, as well as of the sum of PI paid by the grantor, Walter E. Hicks, to and received by the trustee, the grantor granted, bargained, sold, assigned, transferred and set over, and by the trust agreement did grant, bargain, sell, assign, transfer and set over unto the trustee, its successors and assigns the properties therein enumerated and described. The trustee accepted and entered upon the administration of the trust as stipulated in the trust agreement. On 8 December 1941 the Pacific war broke out. Walter E. Hicks became incompetent and the People's Bank and Trust Company was appointed guardian of the estate of the incompetent. On 4 September 1947, the Court approved the action of the guardian in advising the Philippine Trust Company, as trustee, of the revocation of the trust and ordered the latter to turn over to the guardian the remaining assets of the incompetent after deducting the stipulated compensation. On 23 October 1947, the Philippine Trust Company, as trustee, turned over to the People's Bank and Trust Company, as guardian, corporate shares and bank deposits which were held by the defendant, as trustee, in compliance with the order of 4 September 1947. On 11 May 1949, John D. Singleton was appointed guardian of the estate of the incompetent in lieu of the People's Bank and Trust Company in Special Proceedings No. 59253 of the Court of First Instance of Manila. After his appointment he inquired into the assets of the incompetent and discovered that the trustee, Philippine Trust Company, had failed to turn over to the former guardian, the People's Bank and Trust Company, the sum of P44,286.27, representing a balance as of 31 October 1941 belonging to the estate of the incompetent in possession of the trustee under the trust agreement at the outbreak of the war on 8 December 1941. Demand was made by the present and former guardians of the estate of the incompetent for the delivery of the said trust fund but the trustee failed, neglected and refused to pay any or part of said amount alleging as excuse therefor that the said trust fund had been transferred to the Bank of Taiwan, Ltd., on 29 September 1944, in obedience to the order of the Japanese Military Administration, "ZAI" No. 257, promulgated on 4 October 1943. In truth and in fact, however, the amount allegedly transferred by the trustee to the Bank of Taiwan, Ltd. on 29 September 1944 was entirely different from and unrelated to the cash funds amounting to P44,286.27 held by the defendant on December 1941 in trust for the estate of the incompetent and for which the trustee is accountable under the law and terms of the trust agreement of 28 March 1941. Stripped of arguments and conclusions, these are the substantial facts pleaded in the complaint filed on 2 February 1950 by John D. Singleton, as guardian of the estate of the incompetent Walter E. Hicks against the Philippine Trust Company as trustee. The plaintiff prayed that after hearing judgment be rendered ordering the defendant to pay to him, as guardian of the estate of the incompetent Walter E. Hicks, the sum of P44,286.27, together with lawful interest thereon from 31 October 1941 to the date of payment, and costs. He also

prayed for such other and further relief as law, equity and justice may warrant.

On 15 January 1951 Walter E. Hicks was declared competent by the Superior Court of the State of California, in and for the County of Los Angeles,' and arrived in Manila on 2 July 1951. Upon motion of the guardian the guardianship in the Manila Court was terminated, the guardian discharged and the incompetent released from guardianship on 6 August 1951 (Special Proceedings No. 59253, Court of First Instance of Manila).

In its answer the defendant admits and denies certain facts pleaded in the complaint and alleges that on 23 October 1947 it turned over to the People's Bank and Trust Company, as guardian of the incompetent, all the remaining assets in full compliance with the aforesaid order of the probate court of 4 September 1947; that the former guardian, the People's Bank and Trust Company, knew that the sum of P44,286.27 sought to be recovered by the plaintiff had been transferred to the Bank of Taiwan, Ltd. by order of the Japanese Military Administration on 29 September 1944 and denies specifically the allegation of the plaintiff that the money allegedly transferred by the trustee to the Bank of Taiwan, Ltd. on 29 September 1944 was entirely different from and unrelated to the sum of P44,286.27 held by the defendant on December 1941 allegedly in trust for the estate of the said incompetent Walter E. Hicks, as set forth by the plaintiff in paragraph 7 of his complaint. As affirmative defenses and counterclaim the defendant alleges that in accordance with the trust agreement it, as trustee, deposited on 10 January 1941 the cash fund in question in a current account with the Philippine Trust Company, a commercial bank, in the name of "W. E. Hicks, Trust No. 1098; that the former guardian of the estate of the incompetent Walter E. Hicks, the People's Bank and Trust Company, had knowledge of and did not object to said current account deposit; that on 4 October 1943 the Director of the Department of General Affairs of the Japanese Military Administration in the Philippines promulgated "ZAI" No. 257 ordering all deposit accounts of hostile people (including that of W. E. Hicks, Trust No. 1098) to be transferred to the Bank of Taiwan, Ltd., as depository of the Bureau of Enemy Custody; that on or about 2 March 1944 the defendant bank was ordered by the Japanese Military Administration to open and transact business and on 29 September 1944 it was compelled to transfer and turn over to the Bank of Taiwan, Ltd., pursuant to "ZAI" No. 257, all deposit accounts of hostile people including that of W. E. Hicks, Trust No. 1098, and that in compliance with the said order the defendant turned over to the Bank of Taiwan, Ltd. the aforesaid balance of current account in the name of "W. E. Hicks, Trust No. 1098;" that on 28 September 1949 the Philippine Trust Company received a letter from the guardian of the estate of Walter E. Hicks requesting the remittance of the sum of P44,286.27; that in reply to said letter, on 8 October 1949 the Philippine Trust Company by its counsel wrote a letter informing the guardian of the decision of the Supreme Court in *Everett Steamship Corporation vs. Bank of the Philippine Islands*, 47 Off. Gaz. 165, which released the Philippine Trust Company from any obligation or responsibility to Walter E. Hicks regarding the said sum; and that in spite of said information about the decision of the Supreme Court in the said case, the plaintiff brought this frivolous action against the defendant causing the latter damage in the sum of P5,000. It prayed that the complaint be dismissed and the plaintiff be ordered to pay the defendant the sum of P5,000 as damages, and costs.

Subsequent to the filing of the complaint it came to the knowledge of the plaintiff that there was another sum of P5,090.06 accountable by the defendant and due to the plaintiff. So on 6 October 1951 the plaintiff sought to amend his complaint to plead another cause of action for the recovery from the defendant of the sum of P5,090.06, but the motion for allowance of an amended complaint was denied on 5 November 1951.

On 14 December 1951 the defendant moved for a summary judgment on the ground that on 29 July 1949 the plaintiff, in his capacity as guardian of the estate of the incompetent Walter E. Hicks, filed a notice of claim for payment of debt with the Philippine Alien Property Administration and swore that the claim for the sum of P44,286.27 was the cash balance of the deposit in the name of Walter E. Hicks in the Philippine Trust Company and transferred to the Bank of Taiwan, Ltd. on 29 September 1944 by order of the Japanese Military

Administration; that for that reason the Philippine Trust Company had denied responsibility for such amount transferred to the Bank of Taiwan, Ltd., and that the claim was filed because Walter E. Hicks had no recourse against the Philippine Trust Company. He further swore that in compliance with the order of the probate court on 23 October 1947, the Philippine Trust Company transferred all the assets of Walter E. Hicks to the People's Bank and Trust Company, the guardian of the estate of the incompetent Walter E. Hicks, except the cash balance of P44,286.27, and that the defendant disclaimed any responsibility for it because of the transfer made of said sum or cash balance to the Bank of Taiwan, Ltd. In the motion for summary judgment the defendant contended that the admission made by the guardian was binding upon the ward and that in view of the admission, except as to the amount of damages sought to be recovered by the defendant in its counterclaim, there was no genuine issue as to any material fact and for that reason prayed for such judgment to which it was entitled as a matter of law, dismissing the plaintiffs complaint with costs. Despite objection of the plaintiff to the motion for summary judgment, as set out in his pleading of 26 January 1952 and of 8 February 1952 attaching thereto an affidavit executed by John D. Singleton on 31 January 1952, wherein he swore that all the facts stated in the claim filed by him, in his capacity as guardian of the estate of the incompetent Walter E. Hicks, with the Philippine Alien Properly Administration, had been obtained and secured from the defendant Philippine Trust Company, and of several other pleadings to the same effect, on 10 March 1952 the Court entered an order granting the motion for summary judgment and dismissing the plaintiff's complaint without costs. The defendant's counterclaim also was dismissed. Motion to set aside the judgment was denied. Hence this appeal. The Court of Appeals certified the case to this Court on the ground that only questions of law are raised.

The appellant assigns as error the denial by the Court below of a motion to allow an amended complaint so as to include a second cause of action for the recovery of the sum of P5,090.06 which the plaintiff learned was due to the estate of the incompetent Walter E. Hicks only after the filing of the complaint. We cannot pass upon this alleged error because from such denial no appeal has been taken by the plaintiff.

Section 2, Rule 36, provides

A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits for a summary judgment in his favor as to all or any part thereof.

Section 3 of the same Rule provides—

* * * The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The last quoted provisions which give courts' authority to grant relief by summary judgment are intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits. But if there be a doubt as to such facts and there be an issue or issues of fact joined by the parties neither one of them can pray for a summary judgment. Where the facts pleaded by the parties are disputed or contested proceedings for a summary judgment cannot take the place of a trial. For that reason section 5 prescribes and requires that "supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Depositions and affidavits are those supporting or denying the facts stated in the pleadings by the parties to an action, and from which it may clearly be drawn that certain facts pleaded by either party are certain, undisputed and indubitable which dispense with the hearing or trial of the case. Admissions that may be availed of to pray for a summary judgment are those made in pleadings filed by the parties or made by a party to an action, as provided for in Rule 23. The fact stated in the sworn declaration executed by the guardian of the incompetent to support his claim filed with the Philippine Alien

Property Administration that the cash balance of P44,286.27 of the deposit in the name of Walter E. Hicks in the Philippine Trust Company was transferred to the Bank of Taiwan, Ltd., on 29 September 1944 by order of the Japanese Military Administration is neither an admission on nle referred to in section 3, Rule 36, nor an affidavit contemplated in section 5 of the same Rule, because the facts stated therein were not made on personal knowledge but were obtained, secured or derived from the defendant itself and the facts stated therein being hearsay the affiant is not competent to testify to such facts. The affidavit of John D. Singleton of 31 January 1952 attached to the plaintiff's pleading of 8 February 1952 shows that the facts stated in the claim filed by him with the Philippine Alien Property Administration had been obtained from the defendant. And this must be true because all such facts were only known to the officer of the defendant in charge of those transfers or the officer of the receiving bank, the Bank of Taiwan, Ltd. Aside from what has just been stated, paragraph 7 of the complaint alleges—

That in truth and in fact, the money allegedly transferred by defendant to the Bank of Taiwan, Ltd. on September 29, 1944 was entirely different from and unrelated to the cash funds amounting to P44,286.27 held by the defendant on December, 1941 in trust for the estate of said Walter E. Hicks and for which it is still accountable under the law and the terms of the aforesaid Trust Agreement of March 28, 1941 (p. 4, record on appeal.)

This allegation at least raises a cloud and creates a doubt on or as to the certainty of the transfer by the defendant to the Bank of Taiwan, Ltd. of the cash balance of P44,286.27 of the deposit in the name of Walter E. Hicks— a cloud and doubt which withdraw the case from the the operation of Rule 36 and must be removed and cleared by holding a trial of the case.

The summary judgment rendered by the trial court at the instance and upon motion of the defendant is erroneous under the provisions of Rule 36 providing for entrepot summary judgments.

The judgment appealed from is set aside and the case remanded to the trial court for further proceedings in accordance with law, with costs against the appellee.

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

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