

**TESTATE ESTATE OF THE DECEASED TAN CHIONG PUN,
BERNARDINO GUERRERO & ASSOCIATES, APPLICANTS AND
APPELLANTS, VS. FRANCISCO TAN, RESPONDENT-EXECUTOR AND
APPELLEE.**

G.R. Nos. L-20824 and L-21819. June 24, 1965

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

On 11 November 1963, this Court resolved to consider together cases L-20824 and L-21819, which are appeals of applicants Bernardino Guerrero & Associates and of the executor Francisco Tan, respectively, from the same order dated 14 January 1963 of the Court of First Instance of Manila, in its Civil Case No. 31360, fixing the attorneys' fees. The order reads as follows:

"In its order of October 9, 1962, the Court fixed the fees of Attys. Bernardino Guerrero & Associates at fifteen (15%) per cent of the sum of P1,838,068.83, the market value of the estate of the decedent, for all legal services rendered by them until the final termination of the proceeding's. In fixing said attorneys' fees, the Court assumed then that the executor was agreeable thereto as no opposition was filed by him.

"However on December 15, 1962, the executor filed his motion of December 14, same year, asking for reasons therein stated, that said attorney's fees be reduced, making the assessed value of the estate the basis for fixing said fees and that the payment thereof be made until the final termination of the proceedings. On December 22, 1962, the date of the hearing of the executor's motion, Attys. Bernardino Guerrero & Associate filed their objection thereto dated December 21, same year.

"After going over the ground of the said motion and the objections thereto, as well as the services heretofore rendered by said counsel, as enumerated in exhibit C, the Court found that the fees fixed by the Court are in fact excessive and unfair. Disregarding the assessed value of the estate of the deceased or its actual market value, because the latter fluctuates, and taking into consideration the services rendered, the Court hereby fixes the fees of said counsel until the termination of the proceedings at P40,000.00, not including therein whatever amount the executor has already paid, if any; and directs the executor to pay said counsel the sum of P20,000.00 upon account of the fees herein fixed within ten (10) days from notice hereof."

Case L-22218, on the other hand, is an appeal by Bernardino Guerrero & Associate from the order of the same court, in the same civil case, on 31 August 1963, denying, in effect, their motion to strike out from the record the appearances of new counsel, Attorneys Paredes, Poblador, Cruz & Nazareno.

Since the third case, L-22218, is closely related to the two (2) aforesaid cases in factual background and the parties are the same, all three (3) cases are jointly decided in this decision.

The facts may be condensed as follows:

When Tan Chiong Pun died on 25 November 1956, Francisco Tan engaged Bernardino Guerrero & Associates,

with the conformity of the heirs, as counsel for the estate, without stipulating the amount of the attorneys' fees.

The estate of the deceased Tan Chiong Pun was preliminarily assessed by the Bureau of Internal Revenue as worth P1,517,765.53 at the time of his death, but was finally assessed at P1 ,838,068.83.

On 8 December 1956, the said lawyers deposited the "Last Will and Testament" of the decedent with the clerk of court, and then filed on 14 December 1956 a petition for the probate of the will. Until the court heard their motion for the determination of their fees in June, 1962 the r.v.u] lawyers had continuously rendered services for five (5) years and five (5) months. These services consisted in studying the will, which was in Chinese but with an English translation; interviewing and examining witnesses to the will; arranging for the appointment of Dr. Martin Tan as special administrator in order to appease ljs opposition to the appointment of Francisco Tan as the executor; preparing the inventory of properties left by the deceased; intervening in the dispute between one of the legatees and the heirs; securing a copy of the law of succession of China from the embassy in Manila; and filing inventories, accounts, and reports with the court on the financial status of the estate. They also attended to matters involving the Mabuhay Subdivision, such as: determining the purchasers of the lots and the amounts still due from installment buyers; intervening in the controversy, which has reached the Supreme Court, between Francisco Tan and the administrator of the subdivision who refused to surrender the cash and properties of the estate; preparing the deed of donation of the streets and a school-lot to the municipality of Malabon, Rizal; attending to the complaints of the lot-buyers; examining the deeds of transfer covering properties in the subdivision; collecting rentals from tenants; appearing in the hearings on the "Account" of the subdivision administrator. They have appeared in the courts of first instance of Manila and Rizal to secure authority for the correction of the name of the registered owner in certain certificates of title, and in a motion for the cancellation of a title in the name of the deceased and the issuance of a new title in favor of the purchaser of the land; and have dealt with the Bureau of Internal Revenue, in behalf of the estate, until their authorization was withdrawn. The said lawyers had submitted to the probate court five (5) accounts all of which have been approved in toto, except for one which was modified.

Counsel Bernardino Guerrero passed the bar examination in August, 1919, started professional practice of the law in the same year, and has practiced continuously since then. He had been a bar examiner, according to his testimony, three (3) times—once in 1941 and twice in 1946. He had handled some cases that have been reported in the Philippine Reports; has a fairly large clientele; and had associated with, or contended against, some notable lawyers. His associate, Atty. J. C. Madarang, joined him in 1910.

In case L-21819, executoi1 Francisco Tan claims that, because he has already paid P15,000.00 to his lawyers, the award in the order of 14 January 1963 is excessive. On the other hand, in case L-20821, Bernardino Guerrero & Associates claim the opposite, and insist that they are entitled to 15% of the gross estate as finally assessed by the Bureau of Internal Revenue; on this basis, the amount claimed would be P275,710.32.

Considering the facts disclosed by the record, anent the value of the estate, the professional standing of Attorneys Guerrero and Madarang, and the extent of the services rendered by counsel, the award under appeal errs in being too parsimonious. The attorneys rendered services not only in the probate case but also in the administration and supervision of the Mabuhay Subdivision operations for six years. While the tasks performed by them do not appear to require extraordinary skill, yet they involved paying strict attention to numerous and tedious retails that required considerable time, and thereby deprived counsel of the opportunity to render legal services in other cases and collect profitable legal fees, for which it is but just that counsel should be adequately compensated (*David vs. Sison*, 76, Phil. 418). While the fixing of counsel fees is discretionary with the trial court, which is entitled to respect by the appellate tribunals, in this case the order under appeal is not very helpful in its very decision, having been made without any discussion or statement of the reasons that led the court to reach its conclusions. In our opinion, the interests of justice would be substantially served by increasing the award to P100,000 for all

services rendered, less any amounts previously paid to counsel for their services.

The order fixed the term of payment "until the termination of the proceedings" but on 23 July 1963 executor Francisco Tan wrote Attorneys Bernardino Guerrero & Associates terminating their services as 28 January 1961 because of what he termed the "unexpected claim for attorney's fees". On 25 July 1963, Attorneys Paredes, Poblador,, Cruz & Nazareno entered their appearance in the probate court "in substitution" of the original lawyers of record. Guerrero & Associates moved to strike the said appearance of new counsel, but the lower court rejected their motion and a motion for reconsideration; hence the appeal, which is docketed here as case L-22218.

Despite the letter of 23 July 1963 and the appearance of the new lawyers, the original lawyers continued their appearance to protect their own interests, as counsel, in the testate estate, without objection on the part of executor Tan nor of the new lawyers and with the apparent acquiescence of the court.

The lawyers-applicants decry their substitution as illegal and without any force and effect, but at the same time they state that they do not insist on continuing as the counsel of record provided that they are paid the" fees in full (Rec. on App., pp. 25-26, pp. 40-41; Brief. p. 17).

Since the lawyers-applicants have expressed their willingness to be substituted provided their fees are paid in full, there is no need of resolving their assignments of error in L-22218; and since executor Tan ended their services before the termination of the proceedings. and it would be unfair to require dismissed counsel to rendering services after confidence in them had been lost, their fees should be paid in full without waiting for estate proceedings to terminate.

Wherefore, in cases L-20821 and L-21819, the order of 14 January 1963 is hereby modified by ordering the executor to pay the legal fees herein set unto Attorneys Bernardino Guerrero & Associates within sixty (60) days from notice of this decision, with costs against executor Francisco Tan in both appeals.

In case L-22218, the order of 31 August 1963 is hereby affirmed, with costs against Attorneys Bernardino Guerrero & Associates.

Bengzon, C. J., Concepción, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

In L-22218, the order is affirmed; in L-20824 and L-21819, the order is modified.

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