

GLICERIA C. LIWANAG, SPECIAL ADMINISTRATRIX OF THE ESTATE OF PIO D. LIWANAG, PETITIONER, VS. HON. COURT OF APPEALS, HON. JESUS DE VEYRA, AS JUDGE OF THE COURT OF FIRST INSTANCE ...

G.R. No. L-20735. August 14, 1965

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7a258d3f421a/>

CONCEPCION, J.:

Appeal by certiorari from a decision of the Court of Appeals.

Petitioner Glicería C Liwanag is the special administratrix of the estate of Pio D. Liwanag, the settlement of which is the subject of Special Proceeding No. 46599 of the Court of First Instance of Manila. On January 9, 1962 respondent Manuel Agregado commenced against her as such special administratrix, Civil Case No. 50897 of the same court, for the foreclosure of a real estate mortgage constituted in his favor by said Pio D. Liwanag, during his lifetime. On July 18, 1962, herein petitioner moved to dismiss Agregado's complaint, upon the ground that as special administratrix she cannot be sued by a creditor of the deceased. In an order dated August 1, 1962, respondent, Hon. Jesus de Veyra, as Judge of said court, denied the motion, whereupon petitioner filed case CA-G.R. No. 31168-R of the Court of Appeals, against respondent Judge and Agregado, to annul said order by writ of certiorari and enjoin said Judge from entertaining said Case No. 50897. Upon petitioner's motion, the Court of Appeals issued a writ of preliminary injunction directing respondent Judge to refrain from proceeding with the trial of that case, until further orders. However, subsequently, or on December 3, 1962, the Court of Appeals rendered a decision denying the writ prayed for and dissolving said writ of preliminary injunction, with costs against the petitioner. Hence this appeal taken by petitioner upon the theory that, pursuant to Section 2, Rule 81 of the (old) Rules of Court, "a special administrator shall not be liable to pay any debts of the deceased", and that, accordingly, Agregado has no cause of action against her as a special administratrix.

Inasmuch, however, as the alleged absence of a cause of action does not affect respondent's jurisdiction to hear Case No. 50897, it follows that the denial of petitioner's motion to dismiss the same, even if it were erroneous, is reviewable, not by Writ of certiorari, but by appeal, after the rendition of judgment on the merits. Moreover, the theory that a mortgagee cannot bring an action for foreclosure against the special administrator of the estate of a deceased person has already been rejected by this Court. In *Liwanag vs. Hon. Luis B. Reyes*, G. R. No. L-19159 (September 29, 1964), involving the same petitioner herein, the same estate of the deceased Pio D. Liwanag, a similar action for foreclosure, although of another mortgage, and an identical motion to dismiss and issue, we expressed ourselves as follows:

"The defendant Glicería Liwanag filed a motion to dismiss the complaint for foreclosure, on the theory that she may not be sued as special administratrix.

x x x x x x x x

"Section 7 of Rule 86 of the New Rules of Court provides that a creditor holding a claim against the deceased, secured by a mortgage or other collateral security, may pursue any of these remedies: (1) abandon his security and prosecute his claim in the testate or intestate proceeding and share in the general distribution of the assets of the estate; (2) foreclose his mortgage or realize upon his security by an action in court, making the executor or administrator a party defendant, and if there is a deficiency after the sale of the mortgaged property, he may prove the same in the testate or intestate proceedings; and (3) rely exclusively upon his mortgage and foreclose it any time within the ordinary period of limitations, and if he relies exclusively upon the mortgage, he shall not share in the distribution of the assets.

"Obviously, the herein respondent has chosen the second remedy, having filed his action for foreclosure against the administratrix of the property.

"Now the question arises as to whether the petitioner herein can be sued as special administratrix. The Rules of Court do not expressly prohibit making the special administratrix a defendant in a suit against the estate. Otherwise, creditors would find the adverse effects of the statute of limitations running against them in cases where the appointment of a regular administrator is delayed. So that if We are now to deny the present action on this technical ground alone, and the appointment of a regular administrator will be delayed, the very purpose for which the mortgage was constituted will be defeated."

Wherefore, the decision appealed from is hereby affirmed, with costs against the petitioner. It is so ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.