

MANUEL H. BARREDO, ET AL., PETITIONERS VS. THE COURT OF APPEALS ET AL., RESPONDENTS.

G.R. No. L-17863. November 28, 1962

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

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

The present appeal by the heirs of the late Fausto Barredo involves a tardy claim to collect the face value of a promissory note for P20,000.00 plus 12% interest per annum from 21 December 1949, the date of its maturity, plus attorney's fees and costs in the sum of P2,000.00, from the intestate estate of the late Charles A. McDonough, represented herein by the administrator, W. I. Douglas.

The promissory note Was secured by a mortgage executed on 31 December 1940 in favor of Fausto Barredo over the leasehold rights of McDonough on the greater portion of a parcel of registered land located at Dungalo, Parañaque, Rizal, owned by Constantino Factor, and over four (4) houses which McDonough had constructed on the leased land. The lease contract between Factor and McDonough provided for a term of 10 years from 1 September 1936; but on December 1940, the parties extended the term up to 31 August 1961. The original lease, the extension of its term, and the mortgage were all inscribed at the back of the certificate of title of the land.

Upon Fausto Barredo's death on 8 October 1942, his heirs, in a deed of extrajudicial partition, adjudicated unto themselves the secured credit of the deceased, and had the same recorded on the aforesaid certificate of title.

This annotation was, however, cancelled when one day in August, 1944 Manuel H. Barredo was ordered to appear before an officer of the Japanese Imperial Army at the Army and Navy Club and was commanded to bring with him all the documents pertaining to the mortgage executed by the late McDonough, whose private properties, because of his enemy citizenship, were, in the words of the Court of Appeals, "appropriated by the triumphant invader". Manuel H. Barredo was paid P20,000.00 In Japanese war notes by the occupation authorities and made to sign, as he did sign, a certification stating "that in consideration of P2,000.00 which I have received today, I am requesting the Register of Deeds to cancel the mortgage of these properties"; and, as requested, the cancellation was inscribed at the back of the title.

Charles McDonough died on 15 March 1945; thereupon, Special Proceedings No. 70173 of the Court of First Instance of Manila, captioned "In re: Intestate Estate of Charles A. McDonough", was instituted; and pursuant to a court order of 17 August 1945, the administrator caused to be published in the "Philippine Progress" for three consecutive weeks, on 23 and 30 August 1945 and 6 September 1945, a notice to creditors requiring them to file their claims with the clerk of court within 6 months reckoned from the date of its first publication and expiring on 23 February 1946.

On 22 October 1947, the heirs of Fausto Barredo filed their belated claim against the estate of McDonough. This claim Was opposed by the administrator. After hearing, the lower court allowed the claim, but the Court of Appeals reversed the order of allowance; hence, the Barredo heirs appealed to this Court, assigning the following alleged errors:

- That the Court of Appeals erred in holding that the 'one month' period referred to in Section 2 of Rule 87 of the Rules of Court is to be counted from and after the expiration of the six-month period fixed in the published notice to the claims, and in further holding that the trial court had therefore committed a reversible error in admitting and allowing the claim of herein petitioners; and
- That the respondent Court of Appeals erred in holding that the only logical conclusion is that the P20,000.00 in Japanese money paid by the Japanese military authorities to petitioner Manuel H. Barredo were paid for the redemption of the promissory note secured by mortgage of the four buildings.

It is pertinent to state before discussing the arguments of counsel that in view of the burning and destruction of the buildings which were the subject of the mortgage, the petitioners manifested their wish to abandon their security and prosecute the claim against the estate as for a simple money debt, and that when the Barredo heirs filed their claim, no order of distribution had been entered in the proceedings.

Section 2, Rule 87, of the Rules of Court reads:

"SEC. 2. Time within which claims shall be filed.—In the notice provided in section 1, the court shall state the time for the filing of claims against the estate, which shall not be more than twelve nor less than six 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 month."

The probate court previously fixed the period for filing claims at six (6) months reckoned from the date of first publication, and the said notice to creditors was first published on 23 August 1945. The present claim was filed on 22 October 1947; There is no doubt, therefore, that the claim was filed outside of the period previously fixed. But a tardy claim may be allowed, at the discretion of the court, upon showing of cause for failure to present said claim on time.

The respondent administrator, relying on the case of the Estate of Howard J. Edmands, 87 Phil. 405, argues that the one-month period for filing late claims mentioned in Section 2, Rule 87, of the Rules of Court should be counted from the expiration of the regular six-month period, but this pronouncement was but an obiter dictum that did not resolve the issue involved in said case. The ruling appears in the case of Paulin vs. Aquino, L-11267, March 20, 1958, wherein the controverted one-month period was clarified as follows:

"The one-month period specified in this section is the time granted claimants, and the same is to begin from the order authorizing the filing of the claims. It does not mean that the extension of one month starts from the expiration of the original period fixed by the court for the presentation of claims." (*Italics supplied*)

However, the probate court's discretion in allowing a claim after the regular period for filing claims but before entry of an order of distribution presupposes not only a claim of apparent merit but also that cause existed to justify the tardiness in filing the claim. Here, petitioners alleged as excuse for their tardiness the recent recovery of the papers of the late Fausto Barredo from the possession of his lawyer who is now deceased. This ground is insufficient, due to the availability, and knowledge by the petitioners, of the annotation at the back of the certificate of title of the mortgage embodying the instant claim, as well as the payment of P20,000.00 made by the Japanese military authorities.

The order of the trial court allowing the late claim is without justification, because under Section 2, Rule 87, of the Rules of Court, said court has no authority to admit a belated claim for no cause or for an insufficient cause.[1]

In view of the conclusions thus arrived at, it becomes unnecessary to discuss whether the payment by the Japanese

was intended as a discharge of the promissory note. Suffice it to say that there is no other cogent explanation for the payment made to the mortgagees, who were not the owners of the encumbered property.

For the foregoing reasons, the appealed decision, is affirmed, with costs against the petitioners.

Padilla, Bautista Angelo, Labrador, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] In *Paulin vs. Aquino*, supra, the Supreme Court held that the late filing was justified by the fraudulent omission of certain assets in the inventory; in *Gallinero vs. Torres*, 86 Phil., 607; 47 Off. Gaz [12] 224, on the ground of inducement of fraud upon claimant; and in *Estate of De Dios*, 24 Phil. 573, it was held that negotiations with an heir is not a sufficient cause in allowing a tardy claim. Upon the other hand, in *Nebraska Wesleyan University vs. Bowen*, 103 N. W. 275, it was ruled that a court ought not to permit a claim delayed more than 8 months in the absence of diligence and of unavoidable mistake or accident or of a fraud of a nature analogous to that which warrants interposition of a court of equity to grant new trial.

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