

TESTATE ESTATE OF VITO BORROMELO, DECEASED. DR. PATRICIO BELTRAN, SPECIAL ADMINISTRATOR, ATTY. FLORENCIO L. ALBINO, MOVANT AND APPELLEE, VS. TOMAS L. BORROMELO AND AMELIA BORROMELO...*G.R. No. L-19722. February 28, 1966*

Ponente: MAKALINTAL, J.

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In special proceeding No. 916-R of the Court of First Instance of Cebu, Jose H. Junquera was appointed special administrator of the testate estate of the deceased Vito Borrromeo. Teofilo Borrromeo and Crispin Borrromeo, who were oppositors to the probate of the will, moved for Junquera's removal on January 2, 1953 on the ground that he had failed and refused to file an inventory of the estate. After hearing the motion was granted by the court in an order dated June 9, 1953, from which order Junquera appealed to the Court of Appeals, which thereafter certified the appeal to Us.

On September 23, 1953 the trial court appointed Dr. Patricio Beltran special administrator "in the interim that the order for the removal (of Junquera) is on appeal" On February 19, 1955 Beltran, without specific authority from the court, cabled Attorney Florencio L. Albino in Manila appointing him as his lawyer in the appealed case, particularly in connection with the hearing scheduled in the Court of Appeals. Albino appeared before said court and filed a written memorandum in behalf of Beltran.

On August 22, 1956 Attorney Albino filed a motion in the lower court praying that his fees be fixed at P4,000.00 and that Beltran, as special administrator, be ordered to pay the same to him. Junquera opposed the motion, but it was granted nevertheless in the court's order of March 26, 1957. It was then that the instituted heirs—Thomas L. Borrromeo, Amelia Borrromeo and Fortunato Borrromeo—took a hand in the incident by appealing from said order, although the appeal of Fortunato was not allowed because it was filed out of time.

On March 4, 1958, upon motion of Attorney Albino, the lower court ordered partial execution of the order of March 26, 1957, and directed Beltran to pay the movant the sum of P2,000.00 from the funds of the estate under administration. The order was forthwith carried out.

Appellants ask that the award of attorney's fees be set aside; that the partial payment of P2,000.00 be declared null and void; and that the movant-appellee be ordered to return the same to the estate.

Appellants' position is well founded. The estate should not be saddled with the payment of appellee's fees. Beltran engaged appellee to defend him although his position as special administrator was not in issue. He was not even a party in that appeal. The order appealed from was for the removal of Junquera as special administrator, upon motion of Crispin Borrromeo and Teofilo Borrromeo, and not the order appointing Beltran as special administrator "in the interim." There was no need for him to appear or put up any defense for himself at the hearing in the Court of Appeals, nor in behalf of the movants-appellees Crispin Borrromeo and Teofilo Borrromeo, who were already

being represented by two reputable lawyers, namely, Attorneys Miguel Cuenco and Numeriano Estenzo.

If Beltran had any interest at all in the outcome of that appeal it was entirely personal to him. The rule is that for attorney's fees for services rendered to an administrator to be chargeable against the estate such services must have been so rendered to assist him in the execution of his trust. Even then, it has been held that the attorney cannot "hold the estate directly liable for his fees; such fees are allowed to the executor or administrator and not to the attorney. The liability for the payment rests on the executor or administrator, but if the fees paid are beneficial to the estate and reasonable, he is entitled to reimbursement from the estate." (Uy Tioco vs. Imperial and Panis, 53 Phil. 802, 805). There is no showing that appellee's employment as lawyer had to do with Beltran's performance of his duties; if anything, the transcript of the record below (consisting of his own testimony) quoted in appellant's brief discloses certain actuations of Beltran as special administrator that were in violation of his trust and prejudicial to the estate.

One other point deserves to be noted in connection with the payment to the movant-appellee of the sum of P2,000.00. Such payment was authorized ten months after the appeal had been taken, with the approval of the record on appeal and appeal bond, from the order of March 26, 1957, which fixed the fees of movant-appellee at P4,000.00. No special reasons were given by the court for the partial execution pending appeal, and there is no law to justify it.

Wherefore, the order appealed from dated March 26, 1957, is hereby set aside; the order of March 4, 1958, is annulled; and the movant-appellee, Attorney Florencio L. Albino, is ordered to pay back to the present administrator of the Estate of Vito Borromeo the sum of P2,000.00, without prejudice to any claim for attorney's fees which he may have against Dr. Patricio Beltran personally. Costs against movant-appellee.

Bengzon, C. J., Concepcion, Reyes J. B. L., Dizon, Regala Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Orders set aside and annulled.

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