

GO CHI GUN ALIAS CHIPBUN GOCHECO, GO AWAY ALIAS LIM KOC AND FEDERICO M. CHUA HIONG, PLAINTIFFS AND APPELLANTS, VS. GO CHO, GO TECSON, DONATO GO TIAK GIAP, CESAREO GO TEK HONG, A...

G.R. No. L-13342. November 28, 1962

Ponente: BENGZON, J.

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BENGZON, J.:

When the receivership proceeding is terminated, who pays for the receiver's compensation? This is the issue in this appeal.

Way back in 1949, the Manila court of first instance (Civil Case No. 5436) at the request of Go Chi Gun, et al, appointed a receiver to take charge of certain properties of the deceased Go Checo of which the petitioners demanded a portion, claiming to be his heirs. The appointment was opposed by the defendants and the matter reached this Court in G. R. No. 3937. This Court, in April 1951, refused to interfere with the lower court's discretion in appointing a receiver.

Thereafter, trial on the merits proceeded in the court below, the plaintiffs trying to annul the project of partition of the properties of Go Checo which had already been approved in his corresponding estate proceedings as long ago as February 1916. The plaintiffs obtained favorable judgment. However, on appeal, it was reversed by this Court in G. R. No. L-5208, "with costs against plaintiffs-appellees" i.e. against Go Chi Gun, et al.

Upon the return of the record to the Manila court, the defendants, who had finally won, presented to the Clerk a bill of costs including therein, among other items, (a) the receiver's bond premium of P1,227.75, and (b) the receiver's compensation of P5,000.00. Over the opposition of Go Chi Gun, et al., the Clerk approved the items; but on appeal to the judge, the latter disallowed the bond premium, and charged the receiver's compensation partly to defendants and partly to plaintiffs, i. e., P1,000.00, to the first and P4,000.00 to the second. Only the latter appealed.

Go Chi Gun, et al. contend that as the receivership had-been properly established, the compensation of the receiver should be charged against the funds under receivership, and not against the party who requested the appointment of a receiver.

The law in this jurisdiction gives the court power to grant to the receiver reasonable compensation "to be taxed as costs against the defeated party, or apportioned, as justice requires" (Sec. 8, Rules 61). Nobody questions the amount of the receiver's compensation. This Court gave judgment for defendants "with costs against plaintiffs". Prima facie therefore, the plaintiffs should pay such compensation as part of the costs. However, the Manila court being of the opinion that the receivership had "also been of some utility to the defendants, because foreclosure of the mortgage of some properties had thereby been prevented," charged the latter with a portion of the receiver's fees, i. e. P1,000.00.

We do not see any reason to disapprove the lower court's exercise of its discretion.

Some American decisions are cited to the effect that when receivership has been established in a proper manner, the compensation of the receiver should be paid from the funds under receivership. But obviously, they can not prevail over the clear provisions of our Rules of Court.

Wherefore, the order in question is hereby affirmed, with costs against appellants.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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