

TESTATE ESTATE OF BASIL GORDON BUTLER, DECEASED. ADA LOGGEY GHEZZI, ADMINISTRATRIX-APPELLANT, MERCEDES DE LEON, PETITIONER-APPELLANT, VS. JAMES M. ROSS, OPPOSITOR-APPELLEE.

G.R. No. L-4095. July 30, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Basil Gordon Butler died in New York in 1945, leaving a will. Testamentary proceedings were instituted in the Surrogate's Court of the county of New York, New York, U.S.A. for the allowance of said will. Among the executors named in the will, only James Ross was appointed, and after his death he was substituted by James Madison Ross, now oppositor-appellee.

On September 4, 1948, Mercedes De Leon, a residuary legatee, applied to the Court of First Instance of Manila for administration of the estate left by the deceased in the Philippines, and she was appointed administratrix.

After an investigation the administratrix came to know the executor received in January 1948, the amount of \$605.89 from the Standard Vacuum Oil Company, New York Office, as a fiduciary fund pertaining to the estate, and so she asked the court that said executor be made to account for said money under section 7, Rule 88, of the Rules of Court.

On May 10, 1950, the court entered an order directing the manager of the Standard Vacuum Oil Company to appear before it and account for the money claimed by the administratrix, and when manager J.A. Parrish appealed in response to the order he declared that the money was delivered by the central office of his company to James Madison Ross sometime in January 1948.

The court then ordered James Madison Ross to appear and explain what he knows about the matter, and he appeared and informed the court that he did in fact receive the amount of \$605.89 as above adverted to but that he deposited the same to the credit of the estate with the branch of the National City Bank in New York on January 13, 1948, and on August 2, 1950, he rendered an accounting explaining the disposition made of the controverted money.

To this rendition of account the administratrix filed a written opposition on the ground, among others, that the expenses itemized therein were unauthorized and should be disapproved and, therefore, the executor should be ordered to refund the money to the administratrix.

On August 11, 1950, the court entered an order as follows:

"The motion filed on March 17, 1950 by the administratrix refers to the amount of \$605.89 alleged not to have been accounted for by James Madison Ross as executor.

It is the contention of the administratrix that since the above mentioned amount does not appear to have been

accounted for in the Inventory of Assets of Decedent (Exhibit A), neither in the order of the Surrogate's Court of the County of New York on July 17, 1947 (Exhibit B), the executor James Madison Ross should be personally liable to the administratrix for the above named amount.

The administratrix called upon J.A. Parrish, manager of the Manila Branch office of the Standard Vacuum Oil Co., and James Madison Ross to testify with respect to the amount of \$605.89.

J.A. Parrish declared that he does not have in his possession the said amount and all that he knows about it he learned it from the correspondence related thereto.

James Madison Ross also declared that he has no personal knowledge about said amount of \$605.89. According to the letter (Exhibit 1) and the deposit slip (Exhibit 1-A), it was deposited with the City Bank, N.Y. under date of January 13, 1948 to the credit of the Estate of Basil G. Butler. It was commingled with all other funds of the Estate all of which were used to pay expenses and to make distribution as shown in the final account in the Surrogate's Court for New York County in the State of New York (Exhibit 2-B).

The rendition of account filed by James M. Ross on August 4, 1950 must needs be considered in connection herewith. Said account shows that the amount of \$605.89 has been properly accounted for.

In view hereof, the incident relative to the said amount of \$605.89 is deemed closed, thereby relieving James M. Ross of any pecuniary liability thereof inasmuch as he has not misappropriated it for his own personal use and benefit.

It is so ordered.

Manila, Philippines, August 11, 1950

(Sgd.) POTENCIANO PECSON
Judge"

The case is now before us by virtue of the appeal interposed by the administratrix on the plea that the only questions to be raised would be purely of law.

It is contended by the administratrix that while the sum of \$605.89 was received by James M. Ross when he was no longer the executor of the estate of the deceased Basil Gordon Butler, he having been relieved as such on July 17, 1947, nevertheless, he received said amount as trustee of the estate and as such he was in duty bound under the law to render an accounting thereof either to the Surrogate's Court of the county of New York, or to the Court of First Instance of Manila, and having failed to do so, he can be held personally liable therefor to the legatee.

The record discloses that the money in question was turned over to James M. Ross as trustee of the estate by the manager of the Standard Vacuum Oil Company sometime in January 1948, was deposited by said trustee on January 13 of the same year in the National City Bank of New York, City Bank Farmers branch, in New York City, was commingled with other funds of the estate of the deceased Basil Gordon Butler, and all of it was used to pay the current expenses of the estate and to buy from the Manufacturers Life Insurance Co. an annuity policy of \$17,091.05 for the legatee Mercedes De Leon. All these facts appear in the rendition of account submitted by James M. Ross and from the correspondence relative to the matter submitted to the court during the hearing of this incident. After considering the evidence submitted by both parties, the court found that James M. Ross has satisfactorily explained the disposition made of the money in question and exonerated him from any pecuniary liability. The finding of the court on this matter reads:

"James Madison Ross also declared that he has no personal knowledge about said amount of \$605.89. According to the letter (Exhibit 1) and the deposit slip (Exhibit 1-A), it was deposited with the City Bank, N.Y. under date of January 13, 1948 to the credit of the Estate of Basil G. Butler. It was commingled with all other

funds of the Estate all of which were used to pay expenses and to make distributions as shown in the final account in the Surrogate's Court for New York County in the State of New York (Exhibit 2-B).

The rendition of account filed by James M. Ross on August 4, 1950 must needs be considered in connection herewith. Said account shows that the amount of \$605.89 has been properly accounted for."

Inasmuch as this case was brought before this Court by appellant on the plea that she will only raise questions of law, and the lower court having found from the evidence that the appellee had made a proper accounting of the disposition of the amount claimed by appellant, this Court holds that this finding is final and cannot be disturbed. We do not find any error of law that has been committed by the lower court.

Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Labrador, JJ., concur.

Feria, J., took no part.

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