

**LILLIAN UYTENGUSU LIU, AND SUSAN UYTENGUSU LIMTONG,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS,
HONORABLE JOSE C. BORROMELO, AS PRESIDING JUDGE OF BRANCH
IV, COURT OF FIRST IN...**

G.R. No. L-40314. August 17, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In the testate proceedings of the estate of Tirso Uyengsu, Sr., presided over by the respondent Judge of the then Court of First Instance of Cebu, petitioner Lillian Uytengsu, filed a motion for the appointment of a special administrator for the purpose of recovering 4,280 General Milling Corporation shares of stock allegedly belonging to the estate. The petitioners contended that the incumbent executor, private respondent George K. Young was one of the parties involved in the fraudulent transfer of the said shares which was effected by forging the signature of the deceased. The petitioner claimed that the forgeries were committed by private respondent Wilfred Uytengsu.

The motion was opposed by Wilfred Uytengsu and the widow of the deceased, claiming that the appointment of a special administrator was not proper nor authorized by the rules of court.

The respondent judge, on January 10, 1974, denied the petitioner's motion on the ground that the appointment of a special administrator for the purpose of instituting a separate action to prove the charge of falsification and to recover the shares allegedly indorsed fraudulently to some heirs was not proper, the matter of whether the signature of the deceased was forged or not having been already referred to the city fiscal for investigation. Thereafter, a manifestation was filed by petitioner, Lillian Uytengsu, informing the court that the city fiscal found a prima facie case of forgery against Wilfred Uytengsu, George K. Young and one, Rogaciano Dajao and had endorsed the same to the Office for Civil Relations of the Armed Forces of the Philippines pursuant to General Order Numbers 8 and 12.

The petitioner, Lillian Uytengsu, timely filed her appeal but the approval of the record on appeal was opposed by the respondent executor and the surviving spouse of the deceased who alleged that the order of the respondent court denying the appointment of a special administrator is interlocutory and, therefore, not appealable. The lower court disapproved the record on appeal and dismissed the appeal in its order of July 19, 1974.

After the motion for reconsideration was denied by the court, herein petitioners filed a petition for mandamus or certiorari before the Court of Appeals seeking alternative remedies, to wit: that the appellate court order the respondent judge to approve the record on appeal and certify the same to it so that the appeal may be disposed of in accordance with law; or, for the said court to find the respondent judge to have acted with abuse of discretion in not requiring the respondent executor to take proper measures for the recovery of the shares in dispute including the fruits thereof or least relieving the said executor from his function until the accomplishment of the recovery of the shares.

The respondent Court of Appeals, on January 3, 1975, dismissed the petition on the grounds that it was not in a position to verify the correctness or completeness of the facts alleged in the petition because the same does not include copies of pertinent pleadings and documents relating to and subject of the questioned orders of the trial court, and that the appointment and denial of the appointment of a special administrator lies within the sound discretion of the court and is interlocutory in nature and hence, not a proper subject of an appeal. Further-more, the appellate court ruled that there is already an incumbent executor in the person of the respondent George K. Young. Therefore, there is no more need for the appointment of a special administrator.

On March 18, 1975, the petitioners elevated their case to this Court by way of a petition for certiorari contending that the order of the respondent judge was not interlocutory in nature in view of the fact that there is nothing left to be done and the petitioners and/or the estate which would be deprived of the ownership of the shares of stock would be left without any remedy because of the refusal of the executor to recover the same.

In their brief, the private respondents, aside from emphasizing the interlocutory nature of the appealed order, argued that the disputed shares of stock were not part of the estate of Tirso Uytengsu, Sr., as impliedly admitted by the estate's former executor who, in fact, did not include the said shares in list of properties in the inventory of the estate. On March 14, 1988, this Court issued a resolution dated February 15, 1988 requiring the parties to "move in the premises" to determine whether supervening events have rendered the case moot and academic.

On April 25, 1988, the petitioners manifested before this Court that there has been no compromise agreement that has been entered into by the parties and that it is their desire to have their petition resolved on the merits.

The issue, therefore, which confronts this Court is whether or not the respondent Court of Appeals and the trial court committed grave abuse of discretion in dismissing petitioners' appeal on the ground that the order subject of such appeal was interlocutory.

As early as June 28, 1957 in the case of *Garcia v. Hon. J.P. Flores, et al.* (101 Phil. 781, 786) this Court has ruled:

"xxx We hold that an order appointing a special administrator or a receiver is of interlocutory nature, merely incidental to judicial proceedings; that the court making the appointment retains control over it and that it may modify, rescind, or revoke the same on sufficient grounds at any time before final judgment; and that an order appointing a special administrator or a receiver is not appealable, for the reason that far from being final, it is merely inter-locutory in nature. Such was our holding in the cases of *Samson v. Barrios* (63 Phil. 198), *Borja v. Tan* (97 Phil., 872; 51 Off. Gaz., [11] 5588), and *Manila Electric Co. v. Artiaga and Green* (50 Phil. 144). See also Section 4, Rule 61 of the Rules of Court, authorizing the trial court to discharge a receiver already appointed when convinced that such appointment was procured without sufficient cause; and Section 1, paragraph (e) of Rule 105, to the effect that an appointment of a special administrator is not appealable. From all this it is clear that the respondent Judge not only had juris-diction to revoke his order appointing Orbase as administrator, but that he had authority to do so in the exercise of his sound discretion."

Clearly, the order appealed from was interlocutory and hence, not appealable. Both the trial and appellate courts, therefore, did not commit grave abuse of discretion in dismissing the petitioners' appeal.

It should be noted that aside from the petitioners' manifestation in 1975 stating that the city fiscal has found a prima facie case of fraud against the executor, nothing has been mentioned since then about the progress of the investigation and until today private respondent George K. Young has remained as the executor of the estate, thereby leading us to the inevitable conclusion that the petitioners' charges of fraud against him were unfounded. From the manifestation dated April 7, 1988 filed by the petitioners, it appears that the Regional Trial Court Branch 17 of the Seventh Judicial Region is ready to terminate Special Proceedings No. 2453-R upon the resolution of this petition. The present petition has no merit.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby dismissed for lack of merit.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.

Fernan, C.J., no part, was counsel for petitioners.

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