

**ANTONIO M. PEREZ, AS JUDICIAL GUARDIAN OF BENIGNO, ANGELA,  
AND ANTONIO, ALL SURNAMED PEREZ Y TUASON,  
PETITIONER-APPELLANT, VS. J. ANTONIO ARANETA, AS TRUSTEE OF  
MINORS, RESPONDE...**

*G.R. No. L-18414. July 15, 1968*

Ponente: FERNANDO, J.

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**FERNANDO, J.:**

Rebuffed in this attempt to oust as trustee, appellee J. Antonio Araneta, not the first of its kind either, appellant-guardian Antonio M. Perez of the minors, his children, Benigno, Angela and Antonio Perez y Tuason, filed this appeal from the order of the lower court dated October 31, 1960, dismissing his petition to remove such trustee. The charges and the evidence relied upon to substantiate them were discussed fully in that order. The lower court took particular pains to inquire into each alleged grievance. Reference to its appraisal of the matter will thus prove helpful. It will place things in their proper perspective and explain why the appeal cannot prosper.

The first charge, according to the appealed order, imputed to the trustee the withholding of "the allowances due the beneficiaries for October, November and December, 1956." Why it could not be sustained was explained by the lower court thus: "The guardian filed his motion of September 4, 1956 praying for the modification of the monthly allowances previously fixed in the order of August 10, 1955. Said motion was granted in the order of November 9, 1956 which counsel for the trustee received only on November 13, 1956 when both the trustee and the guardian were abroad. Exactly when the guardian requested for the payment of the allowances after his arrival in Manila was not shown, and while the guardian appeared before this Court on December 22, 1956 and asked for the order of said date directing the payment of the allowances fixed in the order of November 9, 1956, it appeared that the trustee complied by delivering the allowances on December 24, 1956. Under these circumstances, the delay in payment is not attributable to the trustee, and in any case can not be said to have occurred because he was withholding the allowances."<sup>2</sup>

Neither was the second charge found meritorious. It attributed to an associate of the trustee in the practice of the law the statement that if appellant-guardian "would not withdraw his opposition to the trustee's investment in the Philippine-American Drug Company shares, the trustee would charge to income of the trust the amount of P30, 120.95 which the trustee had been authorized to collect as trustee's and attorney's fees."<sup>3</sup> The lower court was not convinced about a remark of that character having been made, or even if it were, that it was in fact authorized by the trustee.

The third charge consisted in the trustee again failing to pay the allowances with the end in view of coercing appellant-guardian to condone "the sale of the Marikina property which the trustee had consummated and which had been previously approved in the order of October 15, 1959."<sup>4</sup> Again, the lower court was unimpressed, there being no proof "that the trustee refused to deliver the allowances though he had enough funds in his possession for that purpose. On the contrary, the accounts of the trustee, the guardian's acquiescence to 'the belated payment of

allowances and net income, and the fact that in the trustee's and the guardian's Joint Manifestation of November 2, 1959 the latter expressly acknowledged the insufficiency of funds to pay the balance of the net income which was then due all indicate that the failure of the trustee to deliver on time the allowances and net income was because of lack of funds and not because he wanted to withhold payment thereof."<sup>5</sup>

Appellant-guardian in the fourth charge contested trustee's investing in shares of the Philippine-American Drug Co., Ramie Textiles, Inc. and International Textiles Mills, Inc. alleged to be business enterprises of trustee's family as improper and unwise as no dividends on said shares were forthcoming. The appealed order dealt with such a charge in this wise "Insofar as the Philippine-American Drug Company shares are concerned, it is improper to touch upon them in this incident because the propriety of their purchase is precisely the issue in the guardian's unresolved appeal from the order of February 14, 1959 wherein this Court upheld said purchase. Furthermore, considering the additional evidence pre-sented in this incident there is no reason to disturb said order of February 14, 1959."<sup>6</sup> The evidence failed to sustain, according to the lower court, the imputation that Ramie Textile, Inc. and International Textile Mills, Inc. were Araneta controlled. As to no dividends having been declared by Ramie Textiles, Inc. and International Textile Mills, Inc., admitted by the trustee, with the qualification that the former firm was organized only in 1956 and the latter only 1957, the lower court stated: "There is merit in this contention. Delayed payment of dividends alone is not decisive of the profitability of an investment and certainly does not by itself establish the instability of the enterprise concerned. This is particularly true in this case where the corporations involved have been recently organized and no evidence of the failing financial status was presented."<sup>7</sup> Neither did the lower court sustain the contention of the appellant-guardian that when the trustee subscribed to Ramie Textiles and International Textile shares, he knew that they had been declared speculative in nature by the Securities and Exchange Commission.

Appellant-guardian, in his fifth charge, questioned the trustee's acquisition of Lepanto shares. Again, the evidence, according to the lower court, proved "that Lepanto Consolidated Mining Co. is very sound and the trustee's accounts show that the trusteeship has regularly earned substantial dividends out of said investment."<sup>8</sup> There was "no adequate evidence or sound basis" according to the appealed order "to sustain the charge that the investments in question are improper or that the making of said investments constitutes an abuse of discretion which, as this Court as repeatedly held, is the sole factor that will justify its interference with the trustee's personal judgment in the administration of this trust."<sup>9</sup>

The sixth charge of non-cooperation against the trustee was dismissed by the lower court as "palpably baseless because the data the trustee did not furnish him were either those that the trustee was not bound to furnish him or those that should be re-reported in the trustee's quarterly accounts. If the trustee can at any time be compelled to furnish him things that the accounts will anyway contain the trustee's duty to account will become unduly burdensome. In this regard, this Court notes from the records of this proceeding that in the numerous conflicts of views between the guardian and the trustee the latter's views were upheld by this Court and in those incidents which the guardian elevated to the Appellate Courts not once was he sustained. It is therefore inclined to hold that the disagreements between the trustee and the guardian were provoked by the guardian's untenable views and not by any lack of cooperation on the part of the trustee."<sup>10</sup>

Again, after a full-discussion of the evidence, the lower court refused to believe the seventh charge that the trustee was guilty "of deception and self-dealing on the allegation that the trustee notified him of the sale of certain lots belonging to the trust in favor of Caltex (Phil.) Inc. but subsequently sold them to the Insular Life Assurance Co., Ltd. in which the trustee is substantially interested."<sup>11</sup> Why such should be the conclusion was explained thus: "In his letter to the guardian dated January 3, 1958, the trustee advised the guardian that he had offered to sell to Caltex and the latter had agreed to buy the lots under the terms therein stated. In its letter to the trustee dated

December 27, 1957, Caltex finally accepted the terms of the sale stating therein that the lots were to be conveyed either to it or its nominee, and in its letter of January 14, 1958 advised the trustee that its nominee was the Insular Life Assurance Co., Ltd. This is the reason why the sale was executed by the trustee in favor of the Insular Life Assurance Co., Ltd. It appeared that Caltex designated said company to receive conveyance of the property because Caltex did not have funds to carry out its expansions programs. Under these circumstances, this Court rejects the allegation that the trustee deceived the guardian because the trustee's notice of January 3, 1958 correctly stated the fact that the sale was in favor of Caltex."<sup>12</sup>

As to why the allegation of self-dealing is untenable, there being the imputation of trustee's interest in the Insular Life Assurance Co., Ltd., is set forth thus: "\* \* \* on January 15, 1958, the date of the sale, the trustee owned only 100 common shares in said compan out of its outstanding 114, 826 common shares at P10.00 per share and 117, 000 preferred shares at P100.00 per share. This neglible stock?holding of the trustee in the Insular Life Assurance Co., Ltd. will not suffice to destroy the distinction between their separate persona-lities and serve as basis to hold that the trustee dealt with himself when he executed the sale in its favor."<sup>13</sup>

It was further noted in the appealed order: "The guardian's serious charge that the trustee wanted the Insular Life Assurance Co., Ltd. instead of this trust to reap the benefits of the lease subsequently agreed upon between said company and Caltex is unfounded. The guardian's own witness, Mr. W. E. Menefee, General Manager of Caltex, testified that he would not agree to lease the lots from the trustee and pay the same rentals Caltex is now paying the Insular Life Assurance Co., Ltd. on a 5-year, 7-year or 10-year contract. It is sufficiently clear the Caltex agreed to pay said rentals to the Insular Life Assurance Co., Ltd. because the latter agreed to give a term of ten (10) years renewable for another ten (10) years at the option of Caltex."<sup>14</sup>

In the appealed order, the plea of appellant-guardian for the removal of the trustee or, the alternative, "to strip him of his power to sell, mortgage or otherwise alienate or exercise any power of strict dominion unless with the unanimous consent of the co-trustee" sought to be appointed in the event that removal is not effected was denied "and the trustee [was] absolved of all the charges \* \* \* presented." Hence this appeal.

Appellant-guardian is far from reconciled to the conclusion reached by the lower court. For him, the lower court erred in absolving the trustee from the seven charges filed. That is the first error alleged. It is net easy to accept his contention that there was in fact such an error committed. The appealed order speaks for itself. It is far from an arbitrary dismissal of the charges aired by the appellant-guardian. Rather, a careful effort was made to inquire into and dispassionately pass upon the alleged shortcomings and failures of the trustee.

Nor is the above the only obstacle to the hopes of appellant-guardian as far as the reversal of the challenged order is concerned. It is obvious on the face of the first assignment of error that the same is essentially factual in character. Considering that the appeal is direct to this Court, what appellant-guardian seeks to accomplish by this first assigned error lacks support in law. Nothing is better settled than that where the correctness of the findings of fact of the lower court is assailed, the Court of Appeals is the proper forum. If resort be had directly to us, then appellant must be deemed to have waived the opportunity otherwise his to inquire into such findings and to limit himself to disputing the correctness of the law applied. In a 1949 decision, *Portea v. Pabellon*,<sup>15</sup> the matter was simply and tersely summarized in the ' statement that the appellant cannot raise questions of fact. In the latest case,<sup>16</sup> decided on this point, the established rule is restated thus: "\* \* \* when a party appeals directly to the Supreme Court, and submits his case there for decision, he is deemed to have waived the right to dispute any finding of fact made by the trial Court."

The other assigned error to the effect that the failure to remove the trustee or in the alternative to provide that he could no longer exercise his power to sell, mortgage, alienate or for that matter any power of strict dominion

without the consent of such co-trustee or co-trustees as might he appointed is likewise untenable. With the lower court carefully examining the charges preferred and thereafter absolving the trustee, it logically follows that there is no justification for his removal or for restricting his authority in the manner suggested.

Moreover, what appellant-guardian would want us to do is to substitute our own discretion on this particular aspect of the case for that of the lower court. Such power we undoubtedly possess, but we are not prepared to exercise it considering all the attendant circumstances which reveal the care and circumspection taken by the lower court. What was said by us in *Arrieta v. National Rice and Corn Corp.*<sup>17</sup> Is not entirely inappropriate. Thus: "Appellant's explanation has neither force nor merit. In the first place, the explanation reaches into an area of the proceedings into which we are not at liberty to encroach. The explanation refers to a question of fact. Nothing in the record suggests any arbitrary or abusive conduct on the part of the trial judge in the formulation of the ruling. His conclusion on the matter is sufficiently borne out by the evidence presented. We are denied, therefore, the prerogative to disturb that finding, consonant to the time-honored tradition of this Tribunal to hold trial judges better situated to make conclusions on questions of fact."

That is all then that this case presents. It appears obvious that there is no occasion for the reversal of the order appealed from. It may not be inappropriate to refer to the absence of goodwill that undeniably marks the relationship of appellant-guardian and the trustee, J. Antonio Araneta - a matter which is apparent from the number of litigations between them.<sup>18</sup> Undoubtedly, there are clashes of temperament. Personality differences have intruded themselves time and time again. It may very well be that the trustee could have at times ruffled the feelings and wounded the susceptibilities of appellant-guardian.

What must be emphasized, however, is that the uppermost consideration should be the welfare of the minor beneficiaries, the children of appellant-guardian, for whom the trust was created. Certainly, as of this time and after all these litigations, there is no requisite showing of the failure of the trustee to live up to the exacting responsibility entrusted to him or his subordination of the well-being of such minors to his own personal interest. What was said by the present Chief Justice in *Trusteeship of the Minors v. Araneta*,<sup>19</sup> bears repeating: "In short, the trustor had such faith and confidence in appellee that she relied fully upon his judgment and discretion. The exercise thereof by appellee should not be disturbed, therefore, except upon clear proof of fraud or bad faith, or unless the transaction in question is Manifestly prejudicial to the interest of the minors aforementioned. Such is not the situation obtaining in the present case."

WHEREFORE, the appealed order of October 31, 1960, absolving the trustee, J. Antonio Araneta, from the charges filed by appellant-guardian, Antonio M. Perez, is affirmed. With costs against the aforesaid appellant-guardian.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro and Angeles, JJ., concur.

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[1]Order, Record on Appeal, p. 364.

2 Ibid, pp. 364-365.

3 Ibid, p. 365.

4 Ibid, p. 366.

5 Ibid, p. 366.

6 Ibid, p. 367.

7 Ibid, p. 368.

8 Ibid, p. 371.

9 Ibid, pp. 371-372.

10 Ibid, pp. 373-374.

11 Ibid, p. 374.

12 Ibid, pp. 374-375.

13 Ibid, p. 375.

14 Ibid, pp. 377-378.

15 84 Phil. 298.

16 Republic v. Luzon. Stevedoring Corp., L-21749, September 29, 1967. The other cases on the same point follow: Pendon v. Diasnes, 91 Phil. 848 (1952); Flores v. Plasima, 94 Phil. 327 (1954); Son v. Cebu Autobus Co., 94 Phil. 892 (1954); Cadiz v. Nicolas, 102 Phil. 1032 (1958); Abijuela v. Dolosa, L-14245, December 29, 1960; Mañacop v. Cansino, L-13971, February 27, 1961; Descutido v. Baltazar, L-11765, April 29, 1961; Rodriguez v. Francisco, L-12039, June 30, 1961; Cuajao v. Tan, L-16298, September 29, 1962; J. M. Tuason & Co., Inc. v. Macalindong, L-15398, December 29, 1962; J. M. Tuason v. Aguirre, L-16827, January 31, 1963; Saturnino v. Phil. American Life Insurance Co., L-16163, February 28, 1963; Aballe v. Santiago, L-16307, April 30, 1963; Cabrera v. Tiano, L-17299, July 31, 1963; Savellano v. Diaz, L-17944, July 31, 1963; Cason. v. San Pedro, L-18928, December 28, 1963; Arrieta v. NARIC, L-15645, January 31, 1964; Nieto de Comilang v. Delenela, L-18897, March 31, 1964; Malaguit v. Alipio, L-18596, September 30, 1964; Esquejo v. Fortaleza, L-15897, February 26, 1965; GSIS v. Cloribel, L-22236, June 22, 1965; DBP v. Ozarraga, L-16631, July 20, 1965; Pisalbon v. Balmoja, L-17517, August 31, 1965; Navarro v. Bacalla, L-20607, October 14, 1965; Eusebio v. Sociedad Agricole de Balarin, L-21519, March 31, 1966; MRR Co. v. Ballesteros, L-19161, April 29, 1966; Sotto v. Sotto, L-20921, May 24, 1966; Dirige v. Biranya, L-22033, July 30, 1966; State Bonding Insurance Co., Inc. v. Manila Port Service, L-22395, December 17, 1966.

17 L-15645, January 31, 1964.

18 Tuason de Perez c. Caluag, L-6182, April 13, 1955; Perez v. Araneta, L-16962, Feb. 27, 1962; Araneta v. Perez, L-16185-86, May 31, 1962; Araneta v. Perez, L-16187, Feb. 27, 1963.

19 L-16708, October 31, 1962.

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