

TESTATE ESTATE OF ALEXANDER I. BACHRACH BY ITS EXECUTRIX ANNE B. BACHRACH, PETITIONER, VS. RAFAEL AMPARO AND INTESTATE ESTATE OF VALENTIN DESCALS BY ITS ADMINISTRATOR IGNACIO PL...

G.R. No. L-3592. February 27, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

This is a petition to annul the order of the respondent judge of December 23, 1949, ordering the herein petitioner as executrix of the deceased Alexander I. Bachrach to pay, within ten days, the claim of Valentin Descals arising out of a promissory note Exh. A, executed on January 23, 1945 by said Alexander I. Bachrach in words as follows:

"Pagare a Don Valentin Descals o a su orden a su requerimiento no antes de ciento veinte (120) dias despues de firmada la paz entre el Japon y los Estados Unidos de America la cantidad de Pesos Siete mil quinientos (P7,500) moneda filipina corriente, valor recibido del misrao a mi entera satisfaccion.

"Manila, 23 Enero 1945.

"Testigo:

"(Fdo.) CARLOS OTEYZA (Fdo.) A. BACHRACH."

The petition is based upon the moratorium law.

It appears that subsequent to the execution of the above note Alexander I. Bachrach died; that in the proceedings to settle his estate in the Manila court of first instance Anne B. Bachrach, the herein petitioner, was named executrix; that Valentin Descals filed therein his claim represented by the note; that at the hearing of February 28, 1946 "the executrix through her counsel" recommended "favorably the payment of the promissory note Exhibit A", and pursuant to such representations, the Honorable Buenaventura Ocampo, Judge, on July 1, 1946, ordered the payment of the sum of P7,500.00 to Valentin Descals in due course of administration; that subsequently Valentin Descals died; that on January 11, 1949 his administrator, the respondent Ignacio Planas, asked the court that the executrix be ordered to pay the above-mentioned promissory note; that the executrix objected alleging two defenses, namely, (1) that the obligation of the deceased Bachrach was payable only after the signing of the treaty of peace with Japan, which so far has not been signed and (2) the moratorium orders and laws; that on February 1, 1949 the respondent judge, acting in Manila, overruled the objection and ordered the payment of the promissory note inasmuch as the order of July 1, 1946, had become final and executory more than two years before; that this last order likewise acquired finality through the failure of petitioner to appeal in due time, the order disapproving her record on appeal having been entered on December 13, 1949; that on December 16, 1949, petitioner filed a motion to suspend the payment of the note and the enforcement of the order of February 1, 1949,

invoking the moratorium orders; that the respondent judge denied the petition and reiterated the order of payment giving the executrix ten days within which to comply. Hence this petition.

This Court is unanimous in the opinion that inasmuch as the executrix recommended payment of the note and the order of payment based on such recommendation has become final and outstanding for several years, the moratorium may not now be invoked, her action being a waiver thereof, which may not be withdrawn at will.

And although relief might possibly be extended under Rule 38 if it is proved that her waiver was made through mistake etc., her failure to appeal the orders denying her petition based on such grounds precludes the grant of any remedy along that line at this stage of the proceedings.

The order of the respondent judge will stand. The petition is denied, with costs.

Moran, C. J., Ozaeta, Pablo, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

Paras, J., took no part.

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