

IN RE: TRUSTEESHIP OF THE MINORS BENIGNO, ANGELA, AND ANTONIO, ALL SURNAMED PEREZ Y TUASON.

G.R. No. L-11788. May 16, 1958

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal taken by Antonio Perez, as judicial guardian of his children, the minors Benigno, Angela, and Antonio, all surnamed Perez y Tuason, from an order of the Court of First Instance of Rizal, dated October 19, 1956, denying a petition for relief from Judgment.

Angela S. Tuason, appellant's mother-in-law and grandmother of his aforementioned children, died on March 20, 1948. She was survived by three (3) children, namely: Angela I. Tuason, married to appellant Antonio Perez, Antonio Tuason and Nieves Tuason de Barretto. The deceased Angela S. Tuason left a will which was duly probated, and J. Antonio Araneta was appointed executor thereof, in special proceeding No. 585 of the Court of First Instance of Quezon City. Paragraph 4 of said will reads:

"CUARTA.— Instituyo como mis unieos herederos a mis mencionadas tres hijas, a razsn de una navena parte del caudal hereditarie que dejare para cada one de ellos. Lags a mi hijo Antenie atra poroian equivalente a dos novenas partes dal caudal hereditaria. Lega asimismo a mis niatts que futren de mi hija Nieves, otra parcian equivalente a dos novenas partas del caudal hereditario. Y finalmente lego a mis nietes qua fueren hides de mi hi,1a Angela etra parcian equivalente a dos novenas partes del caudal faereditarie. Dichos tras legados, sin erabarga astan sujetos a la manda qua se manciaan an el parrafa siguiente. Las dos legadas a favor de mis mencionadas niatos seran admnistrados par mi albacea, J. Antenie Araneta (y en dafecto da esta, su hermano, Salvador Araneta), can amplies poderes de vender las mlsmes, y can su producto adquirir atras bianes, y con derecho a cabrar par su administracion, honorarios razanablas. Los poderes de dicho administrador seran las de un trustee con los paderes mas amplias permitiidas par la ley. Debera, sin embargo, rendir trimestralmente, cuenta de su administracion a las legatarlas que fuaren mayeras de adad y a los tutores de las qua fueren manures de edad. Y asimismo, damera hacerlas antraga de la participacion qua a cada lagatarie carrasponda en las rantas netas de la administracion. La administracion sobra un grupo casara cuando tados mis nletos de diche grupo llegaren a su mayoria de adad, y una mayoria de las mismos acordaren la terminacion de la administracion. Por nietos, debe entanderse no solamente a los nietos varones sino tarabian a las niatos mujeres."

Upon the theory that this provision created a trust, Araneta instituted Special Proceeding No. Q-73 of the Court of First Instance of Quezon City— which is the case at bar— in which he was appointed trustee of the properties belonging to the children of Angela I. Tuason. It would appear, also, that in Special Proceeding No. Q-74 of the same Court, entitled "Trusteeship of Minors Ahgusto Barretto y Tuason, et al", Araneta was, similarly, appointed trustee of the properties belonging to the children of Nieves Tuason de Barretto. On October 5, 1950, Araneta filed, in the present case, a motion for the approval of his accounts as trustee of the properties of the Perez children and a petition to fix his compensation as such trustee. Mr. and Mrs. Perez, through their counsel, Atty. Brady objected thereto and prayed that Araneta be removed, and that the Philippine Trust Company be appointed,

as trustee. By an order dated December 23, 1950, this petition of the Pereses was denied and Araneta's accounts were approved, but the fixing of his fees as trustee was deferred. Having been failed to secure a reconsideration of this order, Mr. and Mrs. Perez filed with the Supreme Court a offer certiorari and preliminary injunction, which was docketed as Case G.R. No. L-6182 entitled "Angela I. Tuason de Perez, et al. vs. Judge Hermogenes Caluag and J. Antonio Araneta." The Pereses maintained therein that the above quoted provision of the will of Angela S. Tuason did not create a trust, that Araneta was not a trustee, and that he should be replaced by the Philippine Trust Co. or some other persons, by reason of his actuations in connection with the sale of a bed of the deceased, of the sum of P248,000 claimed by him as executor of her will, and of the allegedly excessive fees charged by him as trustee of the properties of the Perez children. In due course, this Court rendered a decision, on April 13, 1955, holding that a trust had been established by the deceased and that the fees to be collected by Araneta as trustee should be determined by the lower court, and denying the petition for certiorari, as well as dissolving the writ of preliminary injunction previously issued.

Thereafter, on June 30, 1955, Mr. and Mrs. Perez filed a motion in Special Proceeding No. Q-73 demanding the participation of their children in the net income of their properties held by Araneta as trustee. When the motion was called for hearing on December 5, 1955, Mr. and Mrs. Perez appeared together with Atty. Brady and Atty. Marcial Lichauco. As counsel for the Pereses, Atty. Brady informed the court that Atty. Lichauco would try to bring about an amicable settlement between the parties and obtained permission to withdraw temporarily in order that Atty. Lichauco could make use of his good offices, for he (Brady) feared that his presence might make a settlement difficult, if not impossible. Thereupon Atty. Lichauco suggested that Araneta and he meet in the chamber of Judge Caluag, who presided the branch of the Court of First Instance of Quezon City to which the case belonged. What transpired thereafter, in the chamber of Judge Caluag appears in the transcript of the stenographic notes then taken, from which we quote:

"THE COURT

You may get in now and discuss the matter.

(At this stage, Atty. Lichauco, Atty. Araneta and the Judge proceeded to the latter's chamber to discuss the matter of settlement, after which discussion the undersigned was called to take down the agreement arrived at between Atty. Lichauco and Atty. Araneta, dictated by Atty. Araneta in the presence of Atty. Lichauco and the Honorable Judge, to wit: Atty. Lichauco and the Trustee have agreed as follows:

- That commencing January, 1956, the trustee will deliver to the beneficiaries of this trust 50% of the net income of the trust. The remaining 50% shall be retained by him until such time as the total amount of inheritance tax paid by him is replenished in its totality;
- That at the end of every quarter, upon the filing of the statements for the quarter, If it should appear that the 50% of the income which was delivered by the trustee to the beneficiaries is less or more than what it should be, an adjustment shall be made to find the correct amount;
- That the trustee shall file his bill for services rendered by him as such trustee up to December 31, 1955, and the measure of his fees as agreed upon between him and Attys. Lichauco and Brady shall be that which this Court adopted and approved in the other case entitled "Trusteeship of Miners Augusto Barretto y Tuason, et al., Sp. Proc. No. Q-74"; and,
- That Atty. Araneta is allowed to collect by way of attorney's fees in the certiorari incident which reached the Supreme Court docketed as G.E. No. L-6182 the sum of Fifteen Thousand (P15,000.00) PESOS."

Forthwith, Judge Caluag issued the following order:

"When the hearing of this case was called, Atty. Brady manifested to the Court that the services of Atty. Marcial P. Lichauco have been contracted to appear in collaboration with him; that as long as he continued as lawyer of the beneficiaries of this trust, would be difficult to come to a settlement of this case, and that he was agreeable to withdraw his appearance for thirty minutes and give Atty. Lichauco and the Trustee an opportunity to discuss and see whether they could come to a settlement. The Court invited both Attys. Lichauco and Araneta to his chambers to discuss, and after the discussion said attorneys have agreed as follows?

"1. That commencing January, 1956, the Trustee will deliver to the beneficiaries of this trust 50% of the net income of the trust. The remaining 50% shall be retained by him until such time as the total amount of inheritance tax paid by him is replenished in its totality;

"2. That at the end of every quarter, upon the filing of the statements for the quarter, if it should appear that the 50% of the Income which was delivered by the Trustee to the beneficiaries is less or more than what it should be, an adjustment shall be made to find the correct amount;

"3. That the Trustee shall file his bill for services rendered by him as such Trustee up to December 31, 1955, and the measure of his fees as agreed upon between him and Attys. Lichauco and Brady shall be that which this Court adopted and approved in the other case entitled 'Trusteeship of Minors Augusto Barrette y Tuason, et al., Sp. Proc. No. Q-74;; and,

"4. That Atty. Araneta is allowed to collect by way of attorney's fees in the certiorari incident which reached the Supreme Court docketed as G.R. No. L-6182 the sum of Fifteen Thousand (P15,000.00) Pesos.

"IN VIEW OF THE FOREGOING, both parties are ordered to comply faithfully with their agreement aboverecited,"

On June 1, 1956, appellant Perez, this time represented by another counsel, filed a pleading, entitled "Petition for Relief from Judgment and Answer to Trustee's Motion dated April 13, 1956" (for the approval of certain disbursements made by Araneta). Insofar as pertinent to this case, said "Petition for Relief from Judgment", was aimed particularly at paragraphs 3 and 4 of the above-quoted order of December 5, 1955. Appellant alleged, substantially, in said petition for relief, that his former counsel, Atty. Lichauco, had acceded to said order "for want of knowledge of the circumstances of the case"; that the amount sought to be collected by the appellee, by way of compensation as trustee is "10% of the total rental, dividend and interest collected by him, and % of the total sales made by him"; that, pursuant to paragraph h of the will above-quoted, the trustee is entitled only to reasonable fees; that, in order to determine the amount thereof, the court should receive evidence on the rate of fees of trustees prevailing in the community; that appellant should be allowed, therefore, to submit evidence thereon; that, when a trustee sells property, "he is entitled to a commission, but not the customary commission"; that some jurisdictions do not permit a trustee, who is a lawyer, to collect fees for his services as such; that appellant's petition for a writ of certiorari was directed, not against the properties held in trust, but against Araneta whose removal was sought, and, that, Araneta should not be compensated for his services in defending himself; and at, as executor of the will of the deceased Angela S. Tuason, the appellee had already collected P248,000, although P20,000 would have sufficed to fully compensate him for his services as such executor. Premised upon these allegations, appellant prayed, insofar as the "petition for relief from judgment" was concerned, that "judgment" be rendered:

"(a) Ordering the trustee to answer our petition for relief from judgment:

"(b) After due hearing, adjusting the fee of the trustee from the inception of this trusteeship to the present to the rate of fees charged by the trust company that may charge the lowest fee;

"(c) Denying the trustee any fees for legal services rendered in SC-G.R. No. L-61825 H(d) Crediting to the

trust on account of any future fee that may be charged by the trustee the amount of P61,000.00 more or less as excess fee charged by the trustee in his capacity as administrator."

After due hearing on this motion, which was objected to by Araneta, Judge Caluag issued an order, dated October 19, 1956, the pertinent parts of which read:

"In the petition for relief, petitioner contends that the order dated December 5, 1955 was not supported by evidence and based on misunderstanding, misapprehension and lack of knowledge on the part of Atty. Marcial P. Lichauco who appeared during the hearing on said date, December 5, 1955. To resolve this contention of the petitioner whether the same is meritorious or not, the Court had to order the transcription of the notes taken during said hearing. It appears from the transcript thereof that Atty. Marcial P. Lichauco appeared as additional counsel and Atty. Brady made of record that it has come to his knowledge that no settlement could be had as long as he represents Mr. and Mrs. Perez, although he was willing to withdraw his appearance and allow Atty. Lichauco and Araneta to discuss the matter if they could do so; that Atty. Brady further stated that he was happy to withdraw and asked for a reason of 30 minutes to allow the two of them (Attys. Lichauco and Araneta) to discuss the matter of settlement. From this manifestation, it is evident that Atty. Lichauco appeared for the petitioner in substitution of Atty. Brady who has temporarily withdrawn precisely for the purpose of effecting a settlement between the parties. Atty. Lichauco, in open Court, stated that he will do what he can to effect a settlement because although he is a lawyer he believes that it is always better to settle a case if it could be done, and that it was upon his suggestion that he and the trustee, Atty. Araneta, meet in chambers for the purpose of exploring means and ways to arrive at a settlement. Said Atty. Lichauco, 'May I suggest Your Honor, that Atty. Araneta and I meet in chambers for the purpose, and by virtue of that suggestion the Presiding Judge invited both Attys. Lichauco and Araneta to enter his chambers. Once in chambers, Attys. Lichauco and Araneta started discussing the matter of settlement of the questions covered by the order dated December 5, 1955, and afterwards Stenographer Mr. Evangelista was called to the chambers and Atty. Araneta, in the presence of Atty. Lichauco himself and the Presiding Judge, dictated to said stenographer the terms and conditions arrived at between him and Atty. Lichauco which were transcribed verbatim in the said order. The Court distinctly remembers that Atty. Lichauco even went out to the Court room to consult his clients regarding the terms and manifested that his clients were agreeable to said terms, and that after the same were dictated to the stenographer he (Atty. Lichauco) made the following statement: 'I should like to make of record that my appearance in this case has been limited to this particular incident, and the parties having arrived at a settlement satisfactory to them all, I hereby withdraw my appearance in connection with any further incident that may arise.' The transcript of stenographic notes and the affidavit executed by Atty. Lichauco in support of the petition for relief substantially corroborates each other.

"IN VIEW WHEREOF, the petition for relief is hereby denied."

Hence, the present appeal, in which appellant maintains that:

"1. The lower court erred in failing to find that our petition for relief from Judgment was filed within the reglementary period.

"2. The lower court erred in failing to find that our petition for relief from judgment was equitable and, that therefore it should be given due course."

Pursuant to Rule 38, section 3, of the Rules of Court, a petition for relief may be "filed within sixty (60) days after the petitioner learns of the judgment, order or proceeding to be set aside, and not more than six (6) months after such judgment or order was entered or such proceeding was taken." The petition for relief before us was filed on June 1, 1956, or within six (6) months after December 5, 1955, when the order in question was issued. Was it filed within said period of sixty (60) days? Appellant states in his brief that copy of the order of December 5, 1955 was received by his counsel, Atty. Brady, on December 19, 1955; that, at that time, the relations between him and Atty. Brady were strained; that, for this reason, Atty. Brady did not turn over said order to him; that it was only on

April 23, 1956, that Atty. Brady turned over the expedients of this case to appellant's present counsel; that early in May, 1956 the latter called appellant's attention to said order of December 5, 1955; and that "it was only then that this order was first read" by appellant (pp. 12-13, appellant's brief). Predicated upon these allegations of fact appellant maintains that the 60-day period, provided for in said section 3 of Rule 38, should be counted from early in May, 1956, when he allegedly came to know of the order in question, and that his petition for relief was filed, therefore, within the reglementary period.

We cannot agree with this pretense. To begin with, said allegations of fact were not made in appellant's verified Petition for relief. Secondly, notice to counsel is tantamount to notice to his client. In fact, the Rules of Court (Rule 27, section 2) require that service upon a party be made "upon his attorneys or one of them, unless service upon the party himself is ordered by the court." Hence, a notice given to such party, not upon the attorney who has appeared on his behalf, is not a notice in law (*Palad vs. Cui*, 28 Phil., 44; *Peuz vs. Isip*, 81 Phil., 218; *Hernandez vs. Clapis* 48 Off. Gaz., 546; *Vivero vs. Santos*, 9 Off. Gaz., 1424, *Jacinto vs. Jacinto*, 52 Off. Gaz., 2582; *Chainani vs. Tancinco*, L-4782, Feb. 29, 1952). Thirdly, Atty. Brady is presumed to have advised his client, appellant herein, of the order in question. Indeed, there is no allegation to the contrary in appellant's petition for relief. Fourthly, the allegation to the effect that it was early in May, 1956 that appellant "first read" the order of December 5, 1955, does not imply that he knew prior thereto neither the existence of such order, nor the substance of its contents. Fifthly, while Lichauco, Araneta Judge Caluag were conferring in the latter's chamber, appellant and his wife were in the court room adjoining said chamber. After stepping out therefrom and consulting the couple, Lichauco returned to the chamber of Judge Caluag, and advised him and Araneta that he (Lichauco) was agreeable to the terms of the settlement proposed by Araneta, because Mr. and Mrs. Perez had given their conformity thereto. In short, we are satisfied, from the circumstances surrounding the case, that appellant had, on December 5, 1955, a substantial knowledge of the terms of the settlement then made, that he had previously agreed thereto, and that he knew that an order was then issued in accordance therewith.

Regardless of the foregoing, we are of the opinion and so hold that the petition for relief is untenable. As regards the fees of Araneta in case G.R. No. L-6182, the affidavit of Atty. Lichauco, submitted by appellant himself, states:

"The trustee then brought up the question of his legal fees in the certiorari case, G.R. No. L-6182, and he suggested a fee of P15,000. Affiant was entirely unfamiliar with the aforementioned case, hence affiant left the Judge's chambers for the purpose of discussing the matter with Mrs. Angela Tuason de Perez and her husband, Antonio Perez. The latter gave their conformity to the trustee's proposal, for which reason affiant told the Honorable Judge that the trustee's proposal would be satisfactory to him. Although affiant was not familiar with the issues involved in G.R. No. L-6182, affiant did not consider it necessary for him to familiarize himself with said case before giving his conformity to the trustee's proposal for the reason that Mrs. Angela Tuason de Perez and her husband, Antonio Perez, parents of the minor children concerned, were agreeable to the trustee's proposal."

In other words, appellant personally agreed to the amount of Araneta's fees in connection with said case L-6182. There was no mistake on the part of Atty. Lichauco, insofar as this phase of the settlement is concerned or paragraph (4) of the order complained of.

Referring now to paragraph (3) thereof— which provides that the measure of the fees of Araneta (for services rendered by him up to December 31, 1955, as trustee of the properties of appellant's children) shall be that which had been adapted and approved by the Court in the other case entitled "*Trusteeship of Minors Augusto Barrette y Tuason et al.*" Special Preceding No. Q-74— Atty. Lichauco stated in his aforementioned affidavit that

"* * * he was informed that the properties being administered by the trustee were more or less the same as the

properties being administered by him in the case under controversy. Affiant, therefore, saw no reason why the fees which the court had approved in the case of the minors Augusta Barretta et al. should not likewise be allowed in the case of the minors Banigne Perez y Tuasan et al."

The factual basis of this conclusion of Atty. Lichauco is not assailed as erroneous. Indeed, the record before us indicates that it is correct. Neither is the logical nature of said conclusion challenged by appellant. The gist of his pretense, however, is that Lichauco could have obtained better terms for appellant, had he (Lichauco) invoked the reasons now given in support of the petition for relief, namely, that the fees charged by Araneta are excessive; that he is entitled only to a reasonable compensation; and that the fees usually charged by trust companies should be ascertained and considered in determining Araneta's compensation.

It will be noted, that the petition for relief is based upon an alleged "mistake", although the argument adduced in support of this averment is Lichauco's "want of knowledge of the circumstances of the case", which, in, itself, does not constitute a mistake. We should not assume, however, that Lichauco had no knowledge of the above mentioned reasons relied upon in the petition for relief under consideration. Indeed, apart from the long years of practice of Lichauco in this jurisdiction, it appears that he went over the record of the case before appearing before Judge Caluag on December 5, 1955.

Appellant has not indicated any single mistake of fact committed by Lichauco which led him to agree to the amicable settlement in question. We cannot even say that he had committed a tactical mistake in connection therewith. And the reason is plain and simple. Appellant was seemingly anxious to have an amicable settlement. He had been litigating for several years, without any tangible result or benefit. He wanted to have a substantial part of the income of the property of his children held in trust by Araneta. But, the previous litigations between appellant and Araneta and the unpleasant incidents they had had therein, were far from conducive to the promotion of good will among them. On the contrary, further bitter litigations could normally be expected under these circumstances. So, even at the risk of hurting the feelings of his counsel, Atty. Brady who actually resented it appellant called Atty. Lichauco to mediate. In order to be successful in his mission, Lichauco a lawyer of experience must have known that he could not possibly get an amicable settlement, if he demanded everything that appellant wanted, and backed the demands of Araneta. Lichauco must have known that, had he insisted on questioning the claim of Araneta for his fees as trustee, as thoroughly as the petition for relief suggests, an amicable settlement would have been impossible. What is worse, in all probability, appellant would not receive, as yet, a sizeable portion of the rentals of the property of his children. If he wanted to get this relief soon, he had to relax somehow his objections to Araneta's fees.

It is, thus, obvious that this is not a case of fraud, accident, mistake or excusable negligence justifying a relief under Rule 38. If there was any mistake at all, the one mainly responsible therefor is appellant himself, for he induced the court to believe that Atty. Lichauco would be in a better position to protect his interests than Atty. Brady, although the latter was more posted than the former on the details of the case. Hence, appellant has no reason to complain.

In view of the foregoing, the order appealed from is hereby affirmed, with costs against appellant Antonio Perez. It is so ordered.

Paras, C.J. Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

Messrs. Justices Padilla and Felix took no part.

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