

ANTONIA FERRER, PLAINTIFF AND APPELLEE, VS. JOSE S. LOPEZ AND MARIANO SANTOS, DEFENDANTS AND APPELLANTS.

G.R. No. 34618. March 05, 1932

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

It appears from the record that Patricio Aliño was appointed administrator of the estate of his late wife, Tasiana Ferrer. In the course of his administration, the court declared that as such he had contracted obligations in favor of the heirs of Tasiana Ferrer to the extent of P9,504.91 which the said court held must be covered by the bonds he had given upon assuming the administration, because he had acted without judicial authority in contracting those obligations.

According to the scheme of partition, Antonia Ferrer, one of Tasiana Ferrer's heirs, was to receive for her portion a credit of P1,188.12 against the administrator, Patricio Aliño included among the obligations mentioned above, which he had incurred.

Before this credit was satisfied, Patricio Aliño died and was substituted by a new judicial administrator, Eutiquio Santa Cruz, who presented the plaintiff's claim before the committee on claims and appraisals with reference to Patricio Aliño's intestate estate. But the claim was not passed upon because one of the members of that committee died, and when his successor was appointed, he required Tasiana Ferrer's administrator to file the claim again, and as this was not done, the committee reported to the court without making any mention of plaintiff Antonia Ferrer's credit.

A petition was filed with the court to extend the period of the committee's sessions, but it was denied. At the hearing, Antonia Ferrer presented the present complaint against Jose S. Lopez and Mariano Santos, Patricio Aliño's sureties. The latter demurred on the ground that the plaintiff lacked personality for such action, and that the facts alleged in the complaint are not sufficient to constitute a cause of action. Upon the demurrer being overruled, the defendants answered with a general denial of the allegations in the complaint and by way of special defense state:

"(a) That the credit mentioned in paragraph IX of the complaint is against the intestate estate of Patricio Alifio, case No. 1906 of the Court of First Instance of Batangas.

"(b) That this court, in civil case No. 20022, authorized the judicial administrator, Eutiquio Santa Cruz, to file such credit with the committee on claims and appraisals with reference to the intestate estate of Patricio Alifio, as the law provides, which neither said administrator nor the heirs of Tasiana Ferrer, did, when the credit was adjudicated to them, in payment of their respective shares in the inheritance.

"(c) That this court only makes the late administrator, Patricio Aliño, liable with his bond for the credit aforesaid, if the coparceners fail to pay it, who are the real debtors of the estate of Tasiana Ferrer.

"(d) That said coparceners do not deny and are willing to pay their debts; but the present administrator, Eutiquio Santa Cruz, has not taken the trouble to collect from them, nor included their debts in the credits of

the estate.

"(e) That for this reason, this court has in several orders refused to hold that the estate of Patricio Aliño is indebted in the amounts composing said credit, as said administrator, Eutiquio Santa Cruz, contended."

After hearing the case, the court ordered the defendants to pay the plaintiff jointly and severally, the amount of P1,188.12, with legal interest from the filing of the complaint, that is, April 15, 1930, until fully paid, plus the costs.

From this judgment the defendants appealed, and in their brief assign the following errors:

"1. The lower court erred in overruling the defendants' demurrer to the complaint.

"2. The lower court also erred in holding that the fact that the administrator of Tasiana Ferrer's estate did not file the claim with the committee on claims and appraisals appointed in the intestate proceedings of Patricio AliNo, within the period given him for that purpose and that such claim has not been passed upon by the committee, does not and cannot bar the plaintiff's action in this case against the defendants as sureties of said administrator, so long as such action has not prescribed.

"3. The trial court also erred in holding that the defendants have made no allegation touching the prescription of the plaintiff's action.

"4. The lower court likewise erred in holding that even apart from Patricio Aliño, the plaintiff's action against the sureties of the latter, can and should be maintained.

"5. Lastly, the court erred in rendering judgment against the defendants."

The fundamental question raised in this appeal deals with the liability of the principal obligor, Patricio AliNo which according to the appellants, has been extinguished, because the plaintiff's claim was not filed with the new committee on claims and appraisals of such deceased administrator's intestate estate, in the manner prescribed by the Code of Civil Procedure, and such being the case, the sureties' liability, being of its nature accessory, was also extinguished.

It should be noted that according to the record of the intestate proceedings of Tasiana Ferrer, from which the present litigation originated, a motion of reconsideration was filed with reference to the order authorizing the heirs of said intestacy jto collect the debt of the late Patricio AliNo through judicial channels, which had been contracted on the occasion of the exercise of his office as judicial administrator. In denying this motion, the court said, among other things, the following:

"The other ground of the motion is untenable. It nowhere appears that the administrator and the heirs of this intestacy waived their right to the credit against the intestacy of the late Patricio AliNo and his sureties, resulting from the deficit or balance against his administration account. The order authorizing the heirs to exercise their action against the sureties of said decedent to recover the aforesaid credit, is just, legal, and must be upheld. The heirs of this intestacy may collect the debt contracted by Patricio Aliño in these proceedings as judicial administrator either by filing a claim with the committee appointed in the intestate proceedings with reference to his estate, or, by bringing an action against his sureties, who bound themselves solidarily by virtue of the bond they executed for the faithful performance of the duties of said deceased as judicial administrator of this intestate estate of the late Tasiana Ferrer."

Subsequent to this order, the plaintiff, Antonia Ferrer, one of the heirs, filed her action against the defendant sureties for the amount here in litigation, which had been adjudicated to her in the partition of Tasiana Ferrer's estate. But setting this order aside, it appears that the administrator Eutiquio Santa Cruz filed Antonia Ferrer's claim with the committee on claims and appraisals appointed by the court in the intestate proceedings of Patricio

Aliño, but the committee did not pass upon it because one of the members of the committee had died, and another was named in his stead, whereupon the committee required said administrator, Euticfuio Santa Cruz, to renew his claim, but he failed to do so.

The appellants maintain that the plaintiff's claim, not having been filed with the committee, cannot be the subject matter of the present complaint. This contention is untenable. The claim has been filed with the committee in due time. And "if a valid presentation of a claim has once been made, a change in the administration by the appointment of another representative does not necessitate a second presentation." (24 C. J., 319, citing *Floyd vs. Clayton*, 67 Ala., 265; *McHardy vs. McHardy*, 7 Fla., 301; *Miller vs. Lewiston Nat. Bank*, 18 Ida., 124; 108, Pac, 901; *Cochran vs. Germania Bank*, 10 Ky. L., 449; *Matter of Hallenbeck*, 119 App. Div., 757; 104 N. Y. S., 568 [mod. on other grounds 195 N. Y., 143; 88 N. E., 16; 133 Am. S. R., 782]; and *Parks vs. Lubbock* [Civ. A.], 50 S. W., 466.) With greater reason may it be said that the change of one of the members of the committee on claims and appraisals does not necessitate a second filing of the claim.

The appellants admit that the committee made no mention of Antonia Ferrer's claim in the report submitted. Whether or not the latter should have appealed from the report of the committee, is a matter that has not been presented to this court. It is true that section 695 of the Code of Civil Procedure provides that one having a claim against a deceased's estate that must be decided by the committee, who, after the publication of the notice required, fails to file it, shall lose the right to enforce said claim or to plead it in counterclaim in any case, except those specified in the Code (with reference to contingent claims).

But the court having held that the amount in question is a part of the debt of the later administrator, Patricio Alino, we believe its filing with the committee was not for the purpose of having said body decide whether or not it was to be accepted, but merely for purposes of classification. C2~4 C. J., 332; *Brennan vs. Brennan*, 65 Cal., 517; 4 Pac, 561; *Darling vs. McDonald*, 101 111., 370; *Manning vs. Mayes*, 79 Tex., 653; 15 S. W., 638; *Ryans vs. Boogher*, 169 Mo., 673; 69 S. W., 1048; *In re Richardson*, 97 Wash., 488; 166 Pac, 776.) And further, inasmuch as the claim in question was duly filed with the committee, this legal provision is not applicable. It follows from all this that the obligation of the later administrator, Patricio Alino, as principal, was not extinguished, and therefore, the accessory obligation of the sureties was likewise not extinguished.

We are therefore of the opinion that, as the principal debtor's obligation is valid and has not been satisfied by his estate, and as the defendant sureties bound themselves solidarily, article 1144 of the Civil Code is applicable, which provides as follows:

"The creditor may sue any of the solidary debtors or all of them simultaneously. An action instituted against one shall not be a bar to those which may be subsequently brought against the others, as long as the debt has not been entirely satisfied." (*Molina vs. De la Riva*, 7 Phil., 345; *Chinese Chamber of Commerce vs. Pua Te Ching*, 16 Phil., 406; *Inchausti & Co. vs. Yulo*, 34 Phil., 978.)

Having reached this conclusion, we deem it unnecessary to discuss the other errors assigned by the appellants. And in view of the foregoing considerations, we affirm the judgment appealed from, without prejudice to any right the defendant sureties may have against the heirs of Patricio Aliño.

With costs against the appellants. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Romualdez, Villa-Real, and Imperial, JJ., concur.

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