

**INTESTATE ESTATE OF THE DECEASED ALFONSO M. TIAOQUI.
GUILLERMO A. CU UNJIENG AND MARIANO CU UNJIENG,
PETITIONERS AND APPELLANTS, VS. JOSE S. TIAOQUI AND ALFREDO
HIDALGO RIZAL, A...**

G. R. No. 43748. July 31, 1937

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

In the Court of First Instance of Manila, Alfonso M. Tiaoqui, in life, instituted civil case No. 40801 against Guillermo A. Cu Unjieng, Mariano Cu Unjieng and Rafael Fernandez for the purpose of recovering from them the sum of P140,000. Upon a bond of P20,000 filed by the plaintiff Tiaoqui, the court ordered the preliminary attachment of the properties of the defendants. Said attachment was the fifth preliminary attachment levied on the same properties of the defendants because the Court of First Instance of Manila, at the instance of the Hongkong & Shanghai Banking Corporation, National City Bank, Malabon Sugar Company, and Smith, Bell & Co., Ltd., and upon the bonds filed by said companies, had previously issued the resulting writs. During the pendency of said civil case, Alfonso M. Tiaoqui, died in the City of Manila on March 11, 1933, for which reason his intestate proceedings were commenced in the Court of First Instance of Manila, special proceedings No. 43947, and Jose S. Tiaoqui and Alfredo Hidalgo Rizal were appointed joint administrators. In said civil case, the defendants Guillermo A. Cu Unjieng and Mariano Cu Unjieng filed an amended answer setting up special defenses and a counterclaim in the amount of P9,050,000. This amount is distributed as follows: for losses suffered by them in the credits, bonds and securities in which they were negotiating in China, P3,000,000; for damages incurred by them by reason of the paralization of their credits, bonds and securities business and on other properties in China as well as in the Philippines, P2,050,000, and for injury to their reputation, P4,000,000. In the meantime, the intestate proceedings, followed their ordinary course. Commissioners on claims and appraisal were appointed, who, after assessing the properties, submitted their report stating that no claims had been presented against the deceased. On November 8, 1933, the court, upon being informed that no claims had been presented against the intestate estate, ordered the joint administrators to present a final account and a project of partition within the period of 15 days. On the 24th of said month, the administrators filed a motion for extension of the period for the presentation of the final account and the project of partition, in view of the fact that the balancing of the business would not be made until January, 1934, and furthermore, because there were credits and properties of the administration which were the subject matter of pending litigations. The court, deciding the motion, granted an extension up to January 31, 1934. On January 27, 1934, the court, by means of an order, authorized the administrators to substitute the deceased Alfonso M. Tiaoqui as plaintiffs in civil case No. 40801. On February 3d of said year, the administrators asked for an extension of the time for the presentation of the final account and the project of partition up to the end of said month, for the reason that the balance sheet was still incomplete and the litigations on credits and properties of the administration continued to be pending. On the 7th of said month, the court granted said extension. On February 28th of the same year, the administrators presented the final account and asked for another extension of the time for filing the project of partition on the ground that the litigations on

the P140,000 and other properties of the intestate estate continued to be pending and, therefore, could not be included in the project of partition. On March 20th of said year, the court approved the final account and ordered the administrators to present the project of partition of the properties not involved in the litigations, within 30 days. On April 20, 1934, the administrators filed the project of partition so often required of them, and on July 3d of said year the court issued an order approving the project of partition and requiring the administrators at the same time, after payment of the inheritance tax, to deliver the properties adjudicated to the heirs within fifteen (15) days and to verify the delivery of said properties. On September 21st of the same year, the court ordered the administrators to appear before it and explain why they had not theretofore verified the payment of the inheritance tax and delivered the properties to the heirs in accordance with the approved project of partition. After the delay had been explained by the administrators, the court, in an order of October 8th of said year, granted them 15 days to verify the payment of the inheritance tax and provided that the case would again be called for hearing on the 27th, at 8 o'clock a. m. On October 23, 1934, the administrators, after having paid the inheritance tax, presented the deed of delivery of the properties to the heirs, which deed was ratified on the 25th of said month. The acceptance by the heirs appeared thereinbelow. On the 29th of said month the court issued an order relieving the administrators of their duties and responsibilities and cancelling their respective bonds, in view of the verification of the payment of the inheritance tax and the delivery of the properties to the heirs, and ordered the closing and final filing of the record of the intestate proceedings. On November 10, 1934, the administrators filed an ex parte petition for the reopening of the case on the ground that civil case No. 40801 continued to be pending in the court and, were they to cease as such, the deceased would be left without representation. On said date, the court issued another order whereby it set aside the former one closing the intestate proceedings, ordering the final filing of the record thereof and relieving the administrators of their duties, and directed that the case remain open for the sole purpose of enabling said administrators to prosecute civil case No. 40801 to its termination. The Cu Unjiengs, upon being informed of the latest proceedings followed in the intestate case, filed a motion on November 17, 1934, praying for the annulment of the deed of delivery executed by the administrators in favor of the heirs, and for the return by said heirs, to the intestate estate, of all the properties received by them, to answer for the counterclaim in case it should prosper. The motion was objected to by the administrators and after due hearing, the court, on January 30, 1935, denied it as well as the motion for reconsideration filed by the defendants. The defendants finally excepted thereto and interposed the present appeal.

I. In denying the motion of the Cu Unjiengs dated November 17, 1934, praying for the cancellation of the deed of delivery executed by the administrators and for the return by the heirs, to the intestate estate, of all the properties received by them, the court declared that, while the counterclaim of the Cu Unjiengs was proper according to section 701 of the Code of Civil Procedure and it was not necessary to present it as a claim before the committee on claims on the ground that sections 746 and 747 of the same Code are not applicable thereto, however, as the defendants did not duly appear in the intestate proceedings and they neither informed the court of their counterclaim nor asked for the retention of properties sufficient to pay said counterclaim, in case the court should decide it favorably to them, said defendants are not entitled to the cancellation of the deed of delivery or to the return by the heirs, to the intestate estate, of the properties received by them in the ordinary course of the intestate proceedings. Against this ruling the defendants-appellants formulate the first three assignments of error and contend: that they were not in duty bound to inform the probate court of the pendency of their counterclaim interposed in civil case No. 40801; that the court should have ordered the cancellation of the deed of delivery and the return to the intestate estate of all the properties received by the heirs, and that, consequently, the court should have acted favorably on their petition filed to that effect.

In discussing whether or not the counterclaim of the Cu Unjiengs should have been presented to the committee on claims and whether or not the same is barred for failure to do so, the administrators argued that it was a contingent

claim according to section 746 of the Code of Civil Procedure and that it is now barred for not having been presented to the committee on claims. On the other hand, the defendants-appellants contended otherwise and alleged that the counterclaim may be maintained in the civil case where it was presented, in accordance with section 701 of said Code. Both provisions read as follows:

" SEC.701. An executor or administrator may sue.—Nothing in this chapter shall prevent an executor or administrator from commencing and prosecuting an action commenced by the deceased in his lifetime, for the recovery of a debt or claim, to final judgment, or from having execution on a judgment, and in such case the defendant may plead in offset the claims he has against the deceased, instead of presenting them to the committee, and mutual claims may be offset in such action; and if final judgment is rendered in favor of the defendant, the judgment so rendered shall be considered the true balance against the estate, as though the claim had been presented before the committee.

"Such actions shall be prosecuted in the same province and same court as they would have been if brought by the deceased person while alive."

"SEC. 746. Claims may be presented to committee.—If a person is liable as surety for the deceased, or has other contingent claims against his estate which can not be proved as a debt before the committee, the same may be presented with the proof, to the committee, who shall state in their report that such claim was presented to them."

The first of the above-quoted legal provisions allows the defendant, in the cases mentioned therein commenced or continued by the administrator, to interpose a counterclaim against the deceased without being bound to present it as a claim before the committee on claims. This is the procedure followed by the defendants-appellants. Section 746 refers to contingent claims which must be presented to the committee, to be decided within two years from the time limited for other creditors in accordance with section 748.

In the case of *E. Gaskell & Co. vs. Tan Sit* (43 Phil., 810), this court defined a contingent claim as that "in which liability depends on some future event that may or may not happen, and which makes it uncertain whether there will ever be any liability." Elaborating on the idea, it was stated: "The expression is used in contradistinction to the absolute claim, which is subject to no contingency and may be proved and allowed as a debt by the committee on claims. The absolute claim is such a claim as, if contested between living persons, would be proper subject of immediate legal action and would supply a basis of a judgment for a sum certain. It will be noted that the term 'contingent' has reference to the uncertainty of the liability and not to the uncertainty in which the realization or collection of the claim may be involved. The word 'contingent,' as used in the original English, in the Code of Civil Procedure, conveys the idea of ultimate uncertainty as to the happening of the event upon which liability will arise; and it is not the precise equivalent of the Spanish word 'eventual' by which it is commonly translated. The idea involved in the word 'eventual' may be satisfied with the idea of that which is uncertain only in respect to the element of time. A thing that is certain to happen at some time or other will eventually come to pass although the exact time may be uncertain; to be contingent its happening must be wholly uncertain until the event which fixes liability occurs." Some courts of the American Union have defined a contingent claim as follows: "A contingent claim is where the liability depends upon some future event which may or may not happen, and therefore makes it now wholly uncertain whether there ever will be a liability. (*Sargent vs. Kimball*, 37 Vt., 320, 321 [quote *Converse vs. Elward*, 80 Kan., 558, 563; 103 P., 140; *Grand Lodge I. O. O. F. vs. Troutman*, 80 Kan., 441, 454; 103 P., 94; *Stevens vs. Stevens*, 172 Mo., 28, 36; 72 S. W., 542; *Stichter vs. Cox*, 52 Nebr., 532, 536; 72 N. W., 848; *Curley vs. Hand*, 53 Vt., 524, 526.] To same effect *Jorgenson vs. Larson*, 85 Minn., 134, 136; 88 N. W., 439; *Davis vs. Davis*, 137 Wis., 640, 648; 119 N. W., 334.)" (*Corpus Juris*, vol. 13, p. 114, notes.) "A claim which may never accrue; one which has not accrued and which is dependent on the happening of some future event; one that depends for its effect on some future event, which may or may not happen." (*Corpus Juris*, vol. 13,

p. 114.)

From the definitions just quoted, it is evident that the counterclaim of the defendants-appellants is not a contingent claim because the obligation sought to be enforced against the deceased or his legal representatives, the administrators, does not depend on an uncertain or future event. According to the allegations of the counterclaim contained in the amended answer, the obligation contracted by the deceased arose from the time the conspiracy was carried out and from the time the preliminary attachment was obtained illegally and without any just cause. However, the administrators contend in their brief that the counterclaim is of the nature of a contingent claim because it can not be realized until final judgment has been rendered by the court. This contention is sufficiently refuted by reproducing what has been stated in the case of *E. Gaskell & Co. vs. Tan Sit*, supra, to the effect that "the term contingent has reference to the uncertainty of the liability and not to the uncertainty in which the realization or collection of the claim may be involved."

Referring now to the contention of the defendants-appellants that they were not in duty bound to inform the probate court that they had filed a counterclaim against the deceased, it is true that the Code of Civil Procedure contains no provision directly imposing such duty on them. However, if under section 602 of the same Code the probate court alone had acquired jurisdiction to try and decide the settlement, payment of debts and distribution of the estate of the deceased, to the exclusion of all other courts, it cannot be denied that if the defendants-appellants wanted some remedy from said court for the protection of their rights, they should timely apply to it and ask for the retention of properties sufficient to pay for the counterclaim in case it should prosper. This court is not unmindful of the fact that in this case the administrators were also in duty bound to inform the probate court of the existence of the counterclaim, which duty was partly complied with by them when they reiteratedly informed the court that it was not possible to present a final account or project of partition on the ground that there were pending litigations, among them that brought against the defendants Cu Unjiengs, and when they applied for the reopening of the intestate proceedings and for authority to continue the suit against said defendants. Such duty, however, was coextensive with that of the defendants-appellants and the latter were not relieved thereof by the conduct that might have been observed by the administrators, which conduct, on the other hand, can not be considered improper taking into consideration all the circumstances hereinbefore stated.

II. In the second place, the defendants-appellants claim that the court was in duty bound to order the cancellation of the deed of delivery and the return by the heirs of the properties received by them. It can not be denied that in the ordinary course of an intestate proceeding" the probate court should not authorize the delivery of the properties until after payment has been made of the acknowledged debts of the deceased and of the expenses of administration, and after the approval of the project of partition (sec. 758 of the Code of Civil Procedure), and that, as the counterclaim of the defendants-appellants was pending decision in another court, it was improper to order either the distribution of the inheritance or the delivery thereof to the heirs, but in this case, we should not lose sight of the fact that, as the court had not theretofore been directly informed of said counterclaim, it understood that the inheritance was ready for distribution, it appearing from the report of the committee that there were no debts to be paid and it being inferable from the record that the expenses of administration, including the inheritance tax, had already been paid. If the defendants-appellants had no effective remedy under the law in case their counterclaim should prosper, this court would not hesitate to take another action and would order the cancellation of the deed of delivery and the return of the properties to the intestate estate. But the fact is that said appellants have available the remedy afforded by section 731 of the Code of Civil Procedure under which they may, after having obtained favorable judgment, ask that the heirs contribute in proportion to the value of the properties received by them, to pay their counterclaim (*Pavia vs. De la Rosa*, 8 Phil., 70; *Lopez vs. Enriquez*, 16 Phil., 336; *Fabie vs. Yulo*, 24 Phil., 240). It may be argued that the remedy is not effective because the heirs may in the meantime dispose of said properties, to which it may be remarked that the risk, if any, may well be

prevented by adopting the precautionary measures authorized by law. In so deciding the question, this court has furthermore taken into consideration the fact that the preliminary attachment levied by the deceased upon the properties of the defendants-appellants was in effect nominal, having been the fifth, because prior to the issuance thereof said properties had likewise been preliminarily attached by the Hongkong & Shanghai Banking Corporation, National City Bank, Malabon Sugar Co. and Smith, Bell & Co., Ltd. Under these circumstances, it seems unnecessary to adopt so drastic a measure as to result in depriving the heirs of their possession of the properties received by them by order of the court and to the delivery of which the appellants themselves have contributed in the manner already stated.

III. The last contention of the appellants does not require further and extended consideration because it is a mere corollary of the previous ones.

IV. With respect to the fourth and last assignment of error, neither is it necessary to discuss it anew because it merely refers to the denial of the motion for reconsideration filed by the defendants-appellants.

The appealed order being in accordance with law, it is hereby affirmed, with the costs of this instance to the defendants-appellants. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Diaz, and Laurel, JJ., concur.

CONCURRING

CONCEPCION, J.,

I concur with the majority in the result. I am of the opinion that the proper remedy that the appellants should have applied for is the annulment of the order of the court of July 3, 1934, approving the project of partition of the properties of the deceased Tiaoqui and requiring the administrators, after payment of the inheritance tax, to deliver said properties to the heirs of said deceased in accordance with the approved partition. To ask, as the appellants have done, for the annulment of the deed of delivery of the properties to the heirs and for the return of said properties by the latter to the administration of the intestate estate of Tiaoqui, without asking for the annulment of the order approving the partition which is the root and legal reason for said delivery of the properties to the heirs, was to ask for an inadequate and ineffective remedy for the protection of their rights, that is, to secure the payment of their counterclaim in case it should prosper against the heirs. However, as the appellants, for some unknown reason, failed to file any motion to set aside said order of July 3, 1934, or to appeal therefrom the only remedy open to them, in my opinion, was to bring a separate civil action for the annulment of the order in question, utilizing, in the meantime and from the commencement of the action, the preventive measures prescribed by the Code of Civil Procedure to restrain the heirs from disposing of the properties of resulting in leaving the decision that may be rendered entirely ineffective thereby annulling the partition.

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