

**IN THE MATTER OF THE INVOLUNTARY INSOLVENCY OF RUIZ
& REMENTERIA, S. EN C, ANICETO RUIZ AND BRUNO
REMENTERIA. PHILIPPINE TRUST COMPANY, CLAIMANT AND
APPELLANT, VS. THE HONGKONG ...**

G.R. No. 43822. April 10, 1939

Ponente: MORAN, J.

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MORAN, J.:

On January 23, 1933, appellant herein with three other creditors addressed a petition before the Court of First Instance of Manila seeking a declaration of insolvency of "Ruiz & Rementeria, S. en C." and its general partners, Aniceto Ruiz and Bruno Rementeria. On January 27, parties through respective counsel appeared and agreed upon a suspension of the hearing of the petition until May 6, 1933, as well as upon the appointment of a receiver in the meantime to take possession of and manage all the properties of the partnership as a running concern. The trial court issued an order to this effect, appointed J. W. Cairns receiver, and, among others, directed:

"* * * El depositario asi nombrado deberd dar cuenta al Juzgado de su gestion el dia 2 de mayo de 1933, pudiendo tener en su poder las cantidades ya cobradas por el mismo hasta esta fecha pertenecientes a dicha sociedad."

This order was dated January 27, 1933. On March 6, or two months earlier than the agreed date for the hearing of the petition, respondents were, upon their default and on the evidence adduced by the petitioners, declared insolvent. The receiver continued as such until March 23 when he was elected assignee. On May 26, 1933, Cairns filed his final report and accounting as receiver, and after due hearing thereon, the same was approved, June 10, 1933. On June 28, 1934, the appellant Philippine Trust Company, one of the creditors, moved for reconsideration of the court's order of approval, upon the ground that the receiver's final report and accounting did not include the collections made by him from January 1 to 26, 1933. On May 17, Cairns filed his report as assignee to which a similar objection was interposed by appellant upon the same ground urged in its previous motion for reconsideration. The trial court overruled both objections and disallowed the opposition to the assignee's report. From this order of denial, the present appeal was taken.

Appellant's sole contention is that the phrase "hasta esta fecha" contained in the lower court's order of January 27, 1933 above quoted, refers to the date of issuance of the order and that, accordingly, the receiver was under obligation to account for money received from January 1 to 26, 1933. The phrase "hasta esta fecha" following the date "2 de mayo de 1933" on which the receiver had to make an accounting to the court, was meant to refer to that date as clarified by the lower court itself in a subsequent order. Besides, there is merit in appellee's contention that as he was appointed receiver on January 27, 1933, he was not responsible to the court for collections, if any, made prior to that date.

Furthermore, appellant had been served with copy of the report and made no objection thereto prior to its approval by the court. And, after its approval, appellant, without objection, received its proportionate share of the balance

of the funds as shown in said report. Under these circumstances, the objection made more than one year later cannot be entertained. Appellant's claim that it had not been served with notice of the order of approval but on June 22, 1934, and that it filed its objection six days thereafter, is of no moment, not only for the circumstances above mentioned, but also because, as the lower court had correctly observed, one year is quite a long time when within that year matters have come up in this case in connection with which attorneys for the appellant have handled the records thereof and could have known the contents of the order of June 10, 1933. The Supreme Court of Alabama in an analogous case said:

"* * * There must be a time when litigation in a case must end. When the defendant admits he had notice of the filing and a copy of the receiver's report on the 9th or 10th of June, 1921, before it was confirmed, and did not object to its confirmation and waited until after the court adjourned and until July 9, 1921, nearly 30 days after the report was confirmed, to file exceptions to it and to file motion to set the decree of confirmation aside, the court will not be put in error for refusing to grant his motion or petition. The defendant had waived his right to object and except to its confirmation. (Gerald vs. Miller, 21 Ala., 436; Rule 94, Chancery Practice, p. 1557, Code 1907; Taunton vs. McInnish, 46 Ala., 619; Irvine vs. Armistead, 46 Ala., 363; Micou vs. Tallassee Bridge Co., 47 Ala., 652; McGowan vs. Branch Bank, 7 Ala., 827." (Eagle vs. Bronaugh, 208 Ala., 162; 93 So., 868, 869.)

Wherefore, order is hereby affirmed, with costs against appellant.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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