

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. PARDO Y ROBLES HERMANOS ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 46365. April 26, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

After the public sale of the mortgaged properties, which were in the hands of a receiver, and the adjudication thereof to the plaintiff Philippine National Bank, as the highest bidder, the latter moved that the receiver be ordered to yield possession of said properties in its favor and to present a final accounting. The defendants objected to the delivery of the properties to the plaintiff, signifying, however, their conformity to the closure of the receivership, provided their attorney, J. Exequiel Espinas, be first paid the amount of P1,700, being the balance of his attorney's fees of P2,000.

Attorney J. Exequiel Espinas also put fn a motion asking that the receiver be ordered to turn over to him the amount of P1,700, to be taken from any amount in the receiver's possession as a result of the sale of the properties in receivership.

By its order of August 20, 1936, the court ruled, among other things, that:

"The amount of attorney's fees to which counsel for the defendants is entitled for his professional services, not having been fixed either by judicial order or by agreement of the parties, the petition of said attorney for the payment to him of P2,000 as such attorney's fees is denied, without prejudice to his right to ask this court, upon notice to the interested parties, to fix the said amount, which shall be paid by the plaintiff."

The quoted portion of the order was appealed by the plaintiff, and in its brief it is contended that the trial court erred in holding that it was empowered to fix the amount of the fees of counsel for the defendants and to order that the same be paid by the plaintiff as receiver of the properties in litigation.

As a general rule, the fees of attorneys should be paid by the party to whom they have rendered their services. (Section 29, Code of Civil Procedure.) Pursuant to this rule, the defendants are the ones bound to pay attorney's fees. The said fees cannot be paid from the funds in the hands of the receiver because there is neither evidence nor allegation that the services rendered by the said attorney for the defendants redounded to the benefit of the receivership or to that of the plaintiff who asked for the appointment of a receiver.

"Ordinarily the services of an attorney employed by defendant to represent him in the receivership proceedings are solely for his benefit and are not to be paid for out of funds brought into court for the benefit of plaintiff and other claimants against the defendant." (Atkinson & Co. vs. Aldrich-Clisbee Co., 248 Fed., 134; Barker vs. Southern Bldg. & Loan Ass'n., 181 Fed., 636; Interstate Trust & Banking Co. vs. United States Fidelity and Guaranty Co., 133 La., 781; O'Connor vs. Keiser, 85 S. C., 522; 67 S. E., 737.)

The defendants-appellees argue that the plaintiff has no reason to question the payment of P1,700 inasmuch as the

P300 of the total amount of P2,000, as fees of said attorney, were paid by the appellant Philippine National Bank without appealing from the various orders requiring it to pay the aforesaid P300.

It is true that by the orders of November 26, 1935 and December 16th of the same year, the court ordered the payment of P300 to Attorney J. Exequiel Espinas on account of his fees as counsel for the defendants; it is also true that the plaintiff did not appeal either from the first order or from that of December 16, 1935 denying its motion for reconsideration; but plaintiff's conformity to the payment by the receiver of the said sum of P300 as fees of Attorney Espinas does not mean conformity to the obligation to pay the balance of P1,700 as ordered by the appealed resolution. It is alleged, however, by the appellees that their attorney, J. Exequiel Espinas, defended the attached properties against extravagance and waste and that his services redounded to the benefit of the parties; but the plaintiff, in turn, contends that the appointment of a receiver was opposed by the defendants and that at no stage of the proceedings in the trial court did the said attorney render any service to increase or protect the properties in the hands of the receiver. No evidence upon the above allegations of the parties having been adduced, we adhere to the general principle above stated that each party should pay the fees of its attorney.

The appealed order is reversed, with the costs of both instances to the defendants. So ordered.

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

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