Supreme Court E-Library

WHEREFORE, accused-appellant Anecito Estibal *y* Calunsag is hereby **ACQUITTED**. His immediate **RELEASE** from detention is hereby **ORDERED**, unless he is being held for another lawful cause. Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then directed to report to this Court the action he has taken within five (5) days from receipt hereof.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Villarama, Jr., and *Perez,*** *JJ.,* concur.

FIRST DIVISION

[G.R. No. 209651. November 26, 2014]

MARCELO INVESTMENT AND MANAGEMENT CORPORATION, and THE HEIRS OF EDWARD T. MARCELO, NAMELY, KATHERINE J. MARCELO, ANNA MELINDA J. MARCELO REVILLA, and JOHN STEVEN J. MARCELO, *petitioners, vs.* **JOSE T. MARCELO, JR.,** *respondent*.

SYLLABUS

1. REMEDIAL LAW, SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF A DECEASED PERSON; APPOINTMENT OF AN ADMINISTRATOR; STILL NECESSARY AT THE LIQUIDATION, PARTITION AND DISTRIBUTION STAGE OF THE INTESTATE PROCEEDINGS.— The settlement of Jose, Sr.'s estate is not yet through and complete albeit it is at the liquidation, partition and distribution stage. Rule 90 of the Rules of Court provides for the Distribution and Partition of the Estate. x x x In this case, we observe that

---

* Additional member per Special Order No. 1883 dated November 25, 2014 in view of the inhibition of Associate Justice Francis H. Jardeleza.

Supreme Court E-Library

the Liquidation of the Inventory of the Estate, approved by the RTC in its Order dated 16 February 2001, is not yet in effect and complete. We further note that there has been no manifestation forthcoming from any of the heirs, or the parties in this case, regarding the completion of the proposed liquidation and partition of the estate. In fact, as all parties are definitely aware, the RTC archived the intestate proceedings pending the payment of estate taxes. x x x More importantly, the liquidation scheme appears yet to be effected, the actual partition of the estate, where each heir separately holds his share in the estate as that which already belongs to him, remains intangible and the ultimate distribution to the heirs still held in abeyance pending payment of estate taxes. x x x To date, more than a decade has passed since the intestate proceedings were archived, thus, affecting the value of the estate's assets. From all of the foregoing, it is apparent that the intestate proceedings involving Jose, Sr.'s estate still requires a regular administrator to finally settle the estate and distribute remaining assets to the heirs of the decedent.

2. **ID.; ID.; ID.; ID.; PREVIOUS NON-APPOINTMENT AS REGULAR ADMINISTRATOR OF AN ESTATE BARS HIS PRESENT APPOINTMENT AS SUCH IN LIEU OF THE REGULAR ADMINSTRATOR WHO DIED.—** In its 13 December 1991 Order, the RTC categorically ruled on who between Edward and Jose, Jr. was fit to administer the estate of Jose, Sr., x x x Notably, the decision of the trial court appointing Edward as the Administrator of the Estate of Jose, Sr., which decision had the imprimatur of a final resolution by this Court, was not merely a comparison of the qualifications of Edward and Jose, Jr., but a finding of the competence of Edward compared to the unfitness of Jose, Jr. x x x As against this Order of the RTC, its subsequent opposite Order dated 6 January 2010 appointing Jose, Jr. as new regular administrator only had two (2) sentences to essentially reverse the previous findings. x x x The first sentence x x x is disproven by the definite finding of "deep concern" in the original Order. The second sentence does not amount to a finding of a qualification superior to that of the rest of the children of Jose, Sr. x x x Undoubtedly, there has been a declaration that Jose, Jr. is unfit and unsuitable to administer his father's estate.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioners.
Divina Law for George T. Marcelo.
Ariel Joseph B. Arias and *Verano Law Firm* for respondent.

D E C I S I O N

PEREZ, *J.*:

The vesting of succession rights on the heirs upon the death of the decedent gives occasion for the baring of sibling disaccords right at the onset of the estate proceedings which is the determination of the administrator of the decedent's estate. In such instances, the liquidation, partition and distribution of the decedent's estate is prolonged and the issue of administration becomes, contrary to its very objective, itself the hindrance to the ultimate goal of settlement of the decedent's estate. We catch a glimpse of that in this case.

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the 24 May 2013 Decision of the Court of Appeals in CA-G.R. CV No. 95219[1] which affirmed the Order[2] of the Regional Trial Court (RTC), Branch 76, Quezon City appointing respondent Jose T. Marcelo, Jr. (Jose, Jr.) as the new regular administrator of the intestate estate of decedent Jose T. Marcelo, Sr.

The facts herein occurred in two stages: (1) the first litigation between two of Jose Marcelo, Sr.'s (Jose, Sr.) compulsory heirs, his sons, Edward, (ascendant of herein petitioners, heirs of Edward T. Marcelo, Katherine J. Marcelo, Anna Melinda J. Marcelo Revilla, and John Steven J. Marcelo) and respondent Jose, Jr., for the appointment of regular administrator of Jose,

---

[1] *Rollo,* pp. 58-71; Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Francisco Acosta and Socorro B. Inting, concurring.

[2] *Id.* at 72-73; Issued by Presiding Judge Alexander S. Balut.

Supreme Court E-Library

Sr.'s estate; and (2) after Edward was appointed regular administrator of Jose, Sr.'s estate and Edward's death in 2009, respondent Jose, Jr.'s revival of his pursuit to administer his father's, Jose, Sr.'s, estate.

These details of these stages follow:

On 24 August 1987, decedent Jose, Sr. died intestate. He was survived by his four compulsory heirs: (1) Edward, (2) George, (3) Helen and (4) respondent Jose, Jr.

Initially, petitioner Marcelo Investment and Management Corporation (MIMCO) filed a Petition for the issuance of Letters of Administration of the estate of Jose, Sr. before the RTC, Branch 76, Quezon City docketed as S.P. Proc. No. Q-88-1448. At first, Helen, along with her brother, Jose, Jr. separately opposed MIMCO's petition; the two prayed for their respective appointment as administrator. Edward opposed Helen's and Jose, Jr.'s respective petitions for issuance of Letters of Administration in their favor and Edward himself prayed for his appointment as regular administrator. Ultimately, MIMCO, George and Edward banded together: (1) opposed Helen's and Jose, Jr.'s petitions, and (2) prayed for Edward's appointment as regular administrator of Jose, Sr.'s estate.

On 21 September 1989, pending issuance of letters of administration, the RTC appointed Helen and Jose, Jr. as special administrators.

In an Order dated 13 December 1991, the RTC appointed Edward as regular administrator of Jose, Sr.'s estate:

> WHEREFORE, PREMISES CONSIDERED, this Court resolves as it hereby resolves to appoint Edward T. Marcelo as the Regular Administrator of the estate of the late Jose P. Marcelo, Sr. upon the posting of a bond amounting to THREE HUNDRED THOUSAND PESOS (₱300,000.00). The aforementioned appointment shall take effect upon his oath as such and conditioned by a bond of ₱300,000.00 which shall insure the fidelity of the said regular administrator in the performance of his duties and obligations as such.[3]

[3] *Id.* at 127.

Supreme Court E-Library

Taking issue with the RTC's Order and questioning Edward's appointment, Jose, Jr. filed successive oppugnant motions: (1) motion for reconsideration of the 13 December 1991 Order; and (2) omnibus motion alleging the RTC Acting Presiding Judge Efren N. Ambrosio's (Judge Ambrocio) unusual interest and undue haste in issuing letters of administration in favor of Edward.

In an Order dated 12 March 1992, the RTC, through Judge Ambrosio, denied Jose, Jr.'s motion for reconsideration:

> WHEREFORE, prescinding from the foregoing, and fortified by the balm of clear judicial conscience, the herein motion is hereby denied. The letters of administration under date of March 4, 1992 issued in favor of Edward T. Marcelo is maintained with full force and effect. The letters testamentary issued in favor of Special Administrator, Jose T. Marcelo, Jr. under date of October 2, 1989 as well as the bond posted by him are hereby ordered cancelled. Likewise, the Special Administrator, Jose T. Marcelo, Jr. is hereby ordered to forthwith deliver to the regular administrator the goods, chattels, money and estate of the deceased in his hands.[4]

In the same vein of denial, the RTC ruled on the Omnibus Motion, thus:

> After a re-examination of the evidence adduced by the parties and a consideration of the arguments raised in the aforecited pleadings, this court arrived at a conclusion that no substantial error was committed by then Acting Presiding Judge Edren N. Ambrosio which would warrant a reversal of the questioned orders, namely, the order dated December 13, 1991 and March 12, 1992.[5]

Adamant on his competence to better administer his father's estate, Jose, Jr. appealed Edward's appointment as regular administrator to the Court of Appeals in CA-G.R. CV No. 43674. However, the appellate court *affirmed in toto*[6] the Orders dated 1 October 1993, 13 December 1991 and 12 March 1992 of the intestate court.

---

[4] *Id.* at 141.

[5] *Id.* at 145.

[6] *Id.* at 143-161.

Supreme Court E-Library

The question of who between Edward and Jose, Jr. should administer their father's estate reached us in G.R. No. 123883 (*Jose Marcelo, Jr. v. Court of Appeals and Edward Marcelo*): we did not find reversible error in the appellate court's decision in CA-G.R. CV No. 43674. We disposed of the case *via* a Minute Resolution dated 22 May 1996,[7] ultimately affirming the RTC's and the appellate court's separate rulings of Edward's competence and better suited ability to act as regular administrator of Jose, Sr.'s estate.

Thereafter, Jose, Jr. persistently opposed Edward's actions as administrator and his inventory of Jose, Sr.'s estate. He filed anew serial motions which culminated in the following 23 June 2000 Order of the RTC:

After a careful study of the arguments raised by the parties in support of their respective claims, the Court finds that the motion filed by oppositor [Jose, Jr.] is not well-taken.

Anent the submission of complete list of stockholders of all the Marcelo group of companies together with the number and current par value of their respective shareholding, suffice it to say that as correctly pointed out by regular administrator [Edward], the shares of stock of the decedent will be equally distributed to the heirs that there is no necessity therefor.

Considering oppositor's insistence on the submission by regular administrator of a true and updated list as well as current market values of all real estate and personal properties of the decedent, the [c]ourt hereby directs herein oppositor [Jose, Jr.] to inform the regular administrator of such data to aid the regular administrator in the preparation of a complete and accurate inventory of the real and personal properties comprising the estate of Jose, Sr.

As regards oppositor [Jose, Jr.'s] prayer for the submission by regular administrator of a true and complete accounting of the subject corporations reckoned from the death of [Jose, Sr.] up to the present, the [c]ourt likewise sees no need therefor as said corporations are not parties to the case and have separate and distinct personalities from the stockholders.

With respect to the project of partition, it appears that regular administrator had already furnished oppositor [Jose, Jr.] with a copy

[7] *Id*. at 162.

Supreme Court E-Library

thereof. Considering however oppositor [Jose, Jr.'s] oral motion for regular administrator to identify the heirs of the decedent and to secure their conformity to the project of partition, oppositor [Jose, Jr.] is given ten (10) days from receipt of the project of partition bearing the conformity of the heirs within to (*sic*) to comment thereon. Thereafter, the parties are directed to submit their project of partition for approval and consideration of the [c]ourt.[8] (Emphasis supplied)

On 15 January 2001, Edward filed a Manifestation and Motion stating that:

1. Oppositor [Jose, Jr.] now conforms to, and has accordingly signed, the attached "Liquidation of the Inventory of the Estate of Jose P. Marcelo, Sr. as of July 26, 2000" x x x.

2. Regular Administrator [Edward] respectfully prays that the Liquidation, duly signed by all four (4) compulsory heirs, be approved as the project of partition of the Estate of Jose P. Marcelo Sr.[9]

and moved for the approval of the Liquidation of the Inventory of the Estate of Jose, Sr. as the project of partition of the Estate of Jose, Sr.

The project of partition reads:

LIQUIDATION OF THE INVENTORY OF THE
ESTATE OF JOSE P. MARCELO, SR.
AS OF JULY 26, 2000

I. SETTLEMENT OF THE CLAIMS AGAINST THE ESTATE (SCH IV)

Payables

1. Marcelo Chemical & Pigment Corp.	₱ 1,556,002.06
2. Maria Cristina Fertilizer Corp.	797,487.00
3. Marcelo Rubber & Latex Products, Inc.	542,932.74
4. Marcelo Investment & Mgnt. Corp.	532,066.35
5. Marcelo Steel Corporation	1,108,252.19

[8] *Id.* at 182.

[9] *Id.* at 183-186.

Supreme Court E-Library

6. H. Marcelo & Co., Inc.	2,356,684.99
TOTAL	₱6,893,425.33

Considering that the Estate as of June 3, 1999 has no sufficient cash to pay-off the above claims of ₱6,893,425.33, I can work out an offsetting arrangement since the Estate has also receivables from these companies as shown below:

	SCH. III-A	SCH. III-B	
	Shares of Stock	Receivables	Total
1. MCPC	₱ 337,018.00	₱ 0.00	₱ 337,018.00
2. MCFC	300,000.00	0.00	300,000.00
3. MRLP	1,288,580.00	3,595,500.00	4,884,080.00
4. MIMCO	0.00	0.00	0.00
5. MSC	11,370.00	532,419.04	543,789.04
6. H. Marcelo	881,040.00	802,521.15	1,683,561.15
TOTAL	₱2,818,008.00	₱4,930,440.19	₱7,748,448.19

If the above receivables and equity with total value of ₱7,748,448.19 will be offset against the claims of ₱6,893,425.33 the net will show the following:

	SCH. III-A & B	SCH. IV	
Companies	Equity & Receivables	Claims	Net Claims (Receivables)
1. MCPC	₱ 337,018.00	₱1,556,002.06	₱1,218,984.06
2. MCFC	300,000.00	797,487.00	497,487.00
3. MRLP	4,884,080.00	542,932.74	(4,341,147.26)
4. MIMCO		532,066.35	532,066.35
5. MSC	543,789.04	1,108,252.19	564,463.15
6. H. MARCEL & CO., Inc.	1,683,561.15	2,356,684.99	673,123.84
TOTAL	₱7,748,448.19	₱6,893,425.33	₱ (855,022.86)

Supreme Court E-Library

Based on the offsetting except for MRLP, which the Estate has net receivables of ₱4,341,147.26 there will be net claims or payables of ₱3,486,124.40 as follows:

1. MCPC	₱1,218,984.06
2. MCFC	497,487.00
3. MIMCO	532,066.35
4. MSC	564,463.15
5. H. Marcelo & Co.	673,123.84
TOTAL	₱3,486,124.40

It is recommended that the net from MRLP of ₱4,341,147.26 be deducted to the above claims as shown below:

Net Receivables from MRLP	₱4,341,147.26
Net Claim	3,486,124.40
Net Receivables from MRLP	₱ 855,022.86

II. After the claims are settled based on the above recommendation, the Estate will have the following assets for distribution to the four (4) of us:

1. PCIB (to be updated)		3,099.81
2. Shares of Stocks	No. Of Shares	Amount
a. MTRC	12,874	₱1,287,400.00
b. MRLP	85,502	855,022.86
c. Farmer Fertilizer Corp.	5,000	5,000.00
d. Republic Broadcasting System	18,054	18,054.00
e. Seafront Resources	6,000,000	60,000.00
f. Industrial Finance	137	1,370.00
g. Astro Mineral	500,000	5,000.00
h. Sta. Mesa Market	42,105	42,105.00
i. Atlas Consolidated Mining	122	2,562.00
j. Phil. Long Distance Telephone	180	130,050.00
k. Jinico (Jabpract Minind)	2,500,000	25,000.00

l. Baguio Country Club	1	12,500.00
4. Receivables – Marcelo Fiberglass		212,729.17

* Based at Par Value

Above assets will be distributed equally by the four (4) of us depending if these will be sold or not. It is very important to note that equal distribution will be based on actual selling price minus taxes and other deduction if any, on the above inventories of estate properties.

Sgd.
EDWARD T. MARCELO
Regular Administrator

Conforme:

Sgd.
GEORGE T. MARCELO

Sgd.
JOSE T. MARCELO, JR.

Sgd.
HELEN T. MARCELO[10]

On 16 February 2001, the RTC issued an Order approving the partition of Jose, Sr.'s estate as proposed by Edward:

Regular administrator [Edward] manifests that oppositor Jose T. Marcelo, Jr. had already expressed his conformity to the Liquidation of the Inventory of the Estate of Jose P. Marcelo, Sr., as of July 26, 2000, as evidenced by his signature therein. He therefore prays that the said document which bears the conformity of all four (4) compulsory heirs of Jose P. Marcelo, Sr. be approved as the project of partition of the estate of Jose P. Marcelo, Sr.

Finding said liquidation of the Inventory of the Estate of Jose P. Marcelo, Sr. to bear the conformity of all the heirs of the decedent and considering further that the period for filing of money claims against the subject estate had already lapsed, the Court resolves to

[10] *Id.* at 185-186.

Supreme Court E-Library

approve said liquidation of Inventory as the project of partition of the estate of Jose P. Marcelo, Sr.

Nonetheless, let the distribution of the estate of Jose P. Marcelo, Sr. among his compulsory heirs in accordance with the approved Liquidation of the Inventory of the Estate of Jose P. Marcelo, Sr. be deferred until herein regular administrator Edward T. Marcelo has submitted to the Court proof of payment of estate taxes of the subject estate.[11]

On 14 September 2001, the RTC archived the intestate proceedings, S.P. Proc. No. Q-88-1448, pending Edward's submission of proof of payment of estate taxes as directed in the 16 February 2001 Order.[12]

On 3 July 2009, Edward died,[13] ushering in the antecedents to the present controversy.

Wasting no time, Jose, Jr. moved to revive the intestate proceedings involving his father's estate, S.P. Proc. No. Q-88-1448, and moved for his appointment as new regular administrator thereof.

Petitioners MIMCO and heirs of Edward, joined by George, opposed Jose, Jr.'s motion and nominated Atty. Henry Reyes as regular administrator in Edward's stead.

On 6 January 2010, the RTC issued the assailed Order, now appointing Jose, Jr. as regular administrator of Jose, Sr.'s estate:

Contrary to the assertion of petitioners, there is no showing that the [c]ourt has previously declared oppositor-movant [Jose, Jr.] unfit to be appointed as an administrator.

The estate is left with no one who will administer the estate, *i.e.*, to liquidate the estate and distribute the residue among the heirs. As well-settled, to liquidate means to determine the assets of the estate and to pay all debts and expenses. Records clearly show that the estate taxes due to the government have not been paid. It is, in

---

[11] *Id*. at 187.

[12] *Id*. at 188.

[13] *Id*. at 192.

Supreme Court E-Library

fact, held that approval of the project of partition does not necessarily terminate administration x x x. There is a necessity to appoint a new regular administrator. Equally noteworthy is that the judicially approved inventory was prepared way back on August 30, 2000. It is but imperative that the same be updated.

In the sound judgment of the [c]ourt, oppositor-movant [Jose, Jr.], a legitimate child of the decedent, appears to occupy higher interest than Atty. Henry A. Reyes in administering the subject estate.

WHEREFORE, premises considered, oppositor Jose T. Marcelo, Jr. is appointed as the new regular administrator of the estate of Jose T. Marcelo, Sr.

Before he enters upon the execution of his trust, and letters of administration issue, he shall give a bond in the amount of ₱200,000.00, conditioned as follows:

a. To make and return to the [c]ourt, within three (3) months, an updated inventory of all goods, chattels, rights, credits, and estate of the deceased which shall come to his possession or knowledge or to the possession of any other person for him;

b. To administer according to the Rules of Court rules, all goods, chattels, rights, credits, and estate which shall at any time come to his possession or to the possession of any other person for him, and from the proceeds to pay and discharge all debts, legacies, and charges on the same, or such dividends thereon as shall be decreed by the court, not to mention the taxes due to the government;

c. To render a true and just account of his administration to the [c]ourt within one (1) year; and at any other time when required by the Court; and

d. To perform all orders of the [c]ourt.[14]

Petitioners filed an Omnibus Motion for Reconsideration of the 6 January 2010 Order and now moved for the appointment instead of George as administrator of Jose, Sr.'s estate. After Comment on the Omnibus Motion, the RTC issued another Order dated 23 March 2010, denying the Omnibus Motion and affirming the appointment of Jose, Jr. as new regular administrator.

[14] *Id*. at 73.

Supreme Court E-Library

Petitioners appealed the RTC's twin Orders dated 6 January 2010 and 23 March 2010 before the appellate court. This time around, the Court of Appeals affirmed Jose, Jr.'s appointment as new regular administrator. Ruling that the selection of administrator lies in the sound discretion of the trial court, the Court of Appeals held that:

1. The prior Order dated 13 December 1991 of the RTC appointing Edward as regular administrator instead of Jose, Jr., which appointment was affirmed by this Court in G.R. No. 123883, did not make a finding on Jose, Jr.'s fitness and suitableness to serve as regular administrator; and

2. On the whole, Jose, Jr. is competent and "not wanting in understanding and integrity," to act as regular administrator of Jose, Sr.'s estate.

Hence, this appeal by *certiorari* ascribing grave error in the Court of Appeals' Decision, to wit:

A.

THERE WAS NO NEED TO APPOINT AN ADMINISTRATOR FOR THE ESTATE OF JOSE P. MARCELO, SR. AS THERE WAS THEN NO PENDING INCIDENTS IN THE ESTATE PROCEEDINGS TO WARRANT THE APPOINTMENT OF AN ADMINISTRATOR.

B.

THE COURT OF APPEALS ERRED IN APPOINTING JOSE, JR. AS THE ADMINISTRATOR OF JOSE, SR.'S ESTATE CONSIDERING THAT JOSE, JR. WAS FOUND, BY A FINAL, IMMUTABLE, AND UNALTERABLE JUDGMENT, TO BE UNFIT TO ACT AS SUCH. THUS, THE COURT OF APPEALS WAS CLEARLY MISTAKEN WHEN IT DISREGARDED THE EARLIER PRONOUNCEMENT ON THE UNFITNESS OF JOSE, JR. TO ACT AS AN ADMINISTRATOR AS IT GOES AGAINST THE PRINCIPLE OF CONCLUSIVENESS OF JUDGMENT.

C.

THE COURT OF APPEALS VIOLATED THE PETITIONERS' RIGHT TO DUE PROCESS, WHEN IT AFFIRMED THE RTC ORDERS, WITHOUT EVEN BOTHERING TO EXPLAIN WHY JOSE, JR. AND

Supreme Court E-Library

NOT GEORGE, SHOULD BE APPOINTED AS ADMINISTRATOR OF JOSE, SR.'S ESTATE.[15]

The appeal is impressed with merit. While we agree with the lower courts that the appointment of a regular administrator is still necessary, we disagree with the appointment of Jose, Jr. as new regular administrator of Jose, Sr.'s estate.

We first dispose of the issue of whether the appointment of a regular administrator is still necessary at this liquidation, partition and distribution stage of the intestate proceedings involving Jose, Sr.'s estate.

Petitioners contend that the appointment of a regular administrator is unnecessary where there remains no pending matter in the settlement of Jose, Sr.'s estate requiring attention and administration. Specifically, petitioners point out that there is no existing or unliquidated debt against the estate of Jose, Sr., the settlement thereof being already at the liquidation, partition and distribution stage. Further on that, the liquidation and proposed partition had long been approved by the probate court.

We are not convinced. The settlement of Jose, Sr.'s estate is not yet through and complete albeit it is at the liquidation, partition and distribution stage.

Rule 90 of the Rules of Court provides for the Distribution and Partition of the Estate. The rule provides in pertinent part:

SECTION 1. *When order for distribution of residue made*. – x x x

No distribution shall be allowed until payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

x x x x x x x x x

SEC. 3. *By whom expenses of partition paid*. – If at the time of the distribution the executor or administrator has retained sufficient effects in his hands which may lawfully be applied for the expenses

[15] *Id.* at 31-32.

Supreme Court E-Library

of partition of the properties distributed, such expenses of partition may be paid by such executor or administrator when it appears equitable to the court and not inconsistent with the intention of the testator; otherwise, they shall be paid by the parties in proportion to their respective shares or interest in the premises, and the apportionment shall be settled and allowed by the court, and, if any person interested in the partition does not pay his proportion or share, the court may issue an execution in the name of the executor or administrator against the party not paying for the sum assessed.

In this case, we observe that the Liquidation of the Inventory of the Estate, approved by the RTC in its Order dated 16 February 2001, is not yet in effect and complete. We further note that there has been no manifestation forthcoming from any of the heirs, or the parties in this case, regarding the completion of the proposed liquidation and partition of the estate. In fact, as all parties are definitely aware, the RTC archived the intestate proceedings pending the payment of estate taxes.

For clarity, we refer to the Liquidation of the Inventory of the Estate, which was divided into two (2) parts: (1) Settlement of the Claims against the Estate, and (2) After Settlement of the Claims, distribution of the remaining assets of the estate to the four (4) compulsory heirs. The same document listed payables and receivables of the estate dependent on a number of factors and contingencies:

1. Payables to various companies where the Marcelo family had equity amounting to ₱6,893,425.33;

Considering that the Estate as of June 3, 1999 has no sufficient cash to pay-off the above claims of ₱6,893,425.33, [Edward] can work out an offsetting arrangement since the Estate has also receivables or equity from these companies as shown below:[16]

x x x x x x x x x

2. Receivables from the same companies amounting to ₱7,748,448.19;

---

[16] *Id*. at 185.

Supreme Court E-Library

If the above receivables and equity with total value of ₱7,748,448.19 will be offset against the claims of ₱6,893,425.33 the net will show the following:[17]

x x x x x x x x x

3. An offsetting of the payables and receivables to be arranged by the then regular administrator, Edward; and

4. Offsetting of the receivables from Marcelo Rubber & Latex Products, Inc. amounting to ₱4,341,147.26 against the net claims against the estate amounting to ₱3,486,124.40 resulting in net receivables of the estate in the amount of ₱855,022.86.

There has been no showing from either of the parties that the receivables of, and claims against, Jose, Sr.'s estate has been actually liquidated, much less, if an offsetting occurred with the companies listed in the inventory on one hand, and Jose, Sr.'s estate, on the other. Although the Marcelo family, in particular the compulsory heirs of Jose, Sr., hold equity in the corporations mentioned in the inventory, considering that the corporations are family owned by the Marcelos', these corporations are different juridical persons with separate and distinct personalities from the Marcelo patriarch, the decedent, Jose, Sr.[18]

More importantly, the liquidation scheme appears yet to be effected, the actual partition of the estate, where each heir separately holds his share in the estate as that which already belongs to him, remains intangible and the ultimate distribution to the heirs still held in abeyance pending payment of estate taxes.[19]

---

[17] *Id*.

[18] Section 2, Title I, Corporation Code of the Philippines

> Section 2. *Corporation defined.* – A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence.

[19] See Articles 1078 and 1079 of the Civil Code:

Supreme Court E-Library

Significantly, even the Liquidation of the Inventory of Jose, Sr.'s estate states that the valuation amount of the shares of stock as listed therein is based on par value, which may have varied given the passage of time. The same document delivers a very important notation that the equal distribution of the listed assets of the estate will depend on the actual selling price of these assets less taxes and other deductions:

> Above assets will be distributed equally by the four (4) [compulsory heirs] depending if these will be sold or not. It is very important to note that equal distribution will be based on actual selling price minus taxes and other deduction if any, on the above inventories of estate properties.[20]

To date, more than a decade has passed since the intestate proceedings were archived, thus, affecting the value of the estate's assets.

From all of the foregoing, it is apparent that the intestate proceedings involving Jose, Sr.'s estate still requires a regular administrator to finally settle the estate and distribute remaining assets to the heirs of the decedent.

We now come to the issue of whether Jose, Jr. may be appointed as regular administrator despite the previous Order of the RTC on 13 December 1991, affirmed by the appellate court and this Court in G.R. No. 123883, that as between Jose, Jr. and Edward, the latter was better suited to act as regular administrator of their father's estate. Stated differently, whether Jose, Jr.'s previous non-appointment as regular administrator of Jose, Sr.'s estate bars his present appointment as such even *in lieu* of Edward who is now dead.

> Art. 1078. Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased.
>
> Art. 1079. Partition, in general, is the separation, division and assignment of a thing held in common among those to whom it may belong. The thing itself may be divided, or its value.

[20] *Rollo*, p. 186.

Supreme Court E-Library

A close scrutiny of the records reveals that in all of Jose, Jr.'s pleadings opposing Edward's appointment as regular administrator, he simultaneously prayed for his appointment as regular administrator of their father's estate. In short, he proffered his competence and qualification to be appointed as regular administrator as a legal issue for resolution of the courts. Essentially, Jose, Jr. was weighed and found wanting by the RTC, the appellate court, and this Court.

In its 13 December 1991 Order, the RTC categorically ruled on who between Edward and Jose, Jr. was fit to administer the estate of Jose, Sr., framing the issue in this wise:

> The [c]ourt's choice as to who among the [compulsory heirs] will be appointed regular administrator of the estate of Jose, Sr. is now limited to Edward and Jose, Jr. in view of the withdrawal of Helen T. Marcelo.
>
> It is this [c]ourt's observation that the continuous internal wranglings between the heirs would achieve nothing. In the meantime, the estate of the late Jose, Marcelo, Sr. is dragged further into the quagmire of dissipation and loss. It would not be amiss to state that the animosity among the interested [petitioners therein], Edward and Jose, Jr. have considerably increased since the filing of their respective petitions, but the [c]ourt on the basis of their qualifications will have to decide whom to appoint as regular administrator. Willingness to act and/or serve as regular administrator is no longer in issue here as both applicants are undoubtedly willing to serve as such. However, after subjecting the evidence, both testimonial and documentary to careful judicial study, this [c]ourt now resolves as it hereby resolves to appoint Edward T. Marcelo as regular administrator of the estate of the late Jose, Sr.

As aptly cited by petitioner, Edward T. Marcelo, there can be no adverse conclusion that may be inferred from the withdrawal of a petition or nomination. While it may be true that initially the petition for the issuance of letters testamentary was filed by Marcelo Investment and Management Corporation (MIMCO for brevity) and by Danilo O. Ibay as nominee of Edward and George Marcelo, the same did not constitute a waiver on the part of Edward T. Marcelo. This can be gleaned from the withdrawal of the nomination of Danilo O. Ibay and the subsequent filing of Edward T. Marcelo of his petition

Supreme Court E-Library

for the appointment as legal administrator on September 14, 1989. Further, nowhere in the provisions of the Revised Rules of Court is such a nomination of a party other than a compulsory heir prohibited.

The documents presented by Jose, Jr. purporting to show that the deceased had other assets other than those enumerated in the original petition filed by MIMCO and which should have been included in the estate cannot be accorded any weight or credence by this [c]ourt, as the individual who supposedly prepared the document was never identified and the sources of information not disclosed. Upon the other hand, the petition filed by MIMCO was based on the Financial Statements prepared by an independent auditor, A. F. Pablo and Associates. On the basis of the information provided by MIMCO in the original petition, this [c]ourt can determine the probable value and nature of the estate of the deceased Jose P. Marcelo, Sr.

There is no argument that both Edward and Jose, Jr. are willing to serve as regular administrator but undoubtedly, Edward appears to be more responsible and competent that his younger brother, Jose, Jr. This is bolstered by the fact that the family corporations and his own personal corporation are presently of sound financial condition. This success, the [c]ourt believes can be attributed to the management skills and the sound management policies Edward has adopted throughout the years. Likewise, it can be deduced that among the four (4) children of Jose, Sr., it was Edward whom he trusted the most. The deceased valued the opinion of Edward on decisions that had to be made and he would have Edward around in his meetings to discuss matter relating to the corporations which he managed. Further, as can be gleaned from the evidence presented by Jose, Jr., it was Edward Marcelo who was appointed as trustee to vote the deceased's share in a Marcelo Corporation, Polaris Marketing Corporation. It was also Edward who was made co-signatory when the deceased deposited money in the bank to be given to the children of Jose, Jr. It is thus quite evident that Edward was really the most trusted child of the deceased.

Upon the other hand, this court looks with deep concern the manner by which Jose, Jr. treats the corporate properties of the Marcelo Group of Companies. Evidence shows that sometime October 21, 1998, Jose, Jr. took evidencing liabilities of the deceased and other pertinent records and up to the present has not returned them. Jose, Jr. cannot justify the taking of the records/or borrowing of the same by asserting that he

Supreme Court E-Library

is now keeping them in his capacity as Special Administrator as he was appointed Special Administrator only on September 21, 1989 whereas the records were "borrowed" as early as October 21, 1988. Be that as it may, what belies Jose, Jr.'s assertion is the fact that the records of the corporation which were allegedly "borrowed/taken" do not form part of the estate of Jose, Sr. but to the corporation from where they were taken.

Likewise, it should be noted that the appointment of Jose, Jr. as one of the Special Administrators does not necessarily make him more qualified to be appointed as regular administrator. The records of the case will bear out, that the appointment of a Special Administrator was premised on the need to have someone, oversee, manage and preserve the estate of Jose, Sr., as there was the danger of the estate being dissipated. Moreover, the [c]ourt never touched on the issue of the qualifications of the applicants, as there was in fact, no evidence presented on the matter, other than the bare allegations of the applicants that they were all qualified to act as such.[21] (Citations omitted)

Notably, the decision of the trial court appointing Edward as the Administrator of the Estate of Jose, Sr., which decision had the imprimatur of a final resolution by this Court, was not merely a comparison of the qualifications of Edward and Jose, Jr., but a finding of the competence of Edward compared to the unfitness of Jose, Jr.

As against this Order of the RTC, its subsequent opposite Order dated 6 January 2010 appointing Jose, Jr. as new regular administrator only had two (2) sentences to essentially reverse the previous findings.

Contrary to the assertion of petitioners, there is no showing that the [c]ourt has previously declared [Jose, Jr.] unfit to be appointed as an administrator.

x x x x x x x x x

In the sound judgment of the [c]ourt, [Jose, Jr.], a legitimate child of the decedent, appears to occupy a higher interest than Atty. Henry A. Reyes in administering the subject estate.[22]

---

[21] *Id*. at 126-127.

[22] *Id*. at 73.

Supreme Court E-Library

The first sentence contained in the Order of 6 January 2010 is disproven by the definite finding of "deep concern" in the original Order. The second sentence does not amount to a finding of a qualification superior to that of the rest of the children of Jose, Sr.

In affirming the issuance of letters of administration to Jose, Jr., the appellate court dwelt largely on the considerable latitude allowed a probate court in the determination of a person's suitability for the office of judicial administrator. The Court of Appeals only briefly delved into Jose, Jr.'s numerous attempts to be appointed regular administrator of Jose, Sr.'s estate which were all denied previously by the same probate court:

> The RTC Order dated 13 December 1991, as affirmed by this [c]ourt in Decision dated 30 March 1995, and by the Supreme Court in the Resolution dated 22 May 1996, did not declare [respondent] Jose, Jr. unfit to serve as administrator. What was ruled upon by the RTC, and affirmed by this [c]ourt, and by the Supreme Court, was the appointment of Edward as the administrator of Jose, Sr.'s estate, and the denial of [respondent] Jose, Jr.'s opposition to Edward's appointment. Nowhere was there any categorical ruling, or a definite finding, that [respondent] Jose, Jr. was, unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude. Thus, there is no merit in [petitioners'] contention that the finding on the unfitness of [respondent] Jose, Jr. became binding, and precluded the RTC from appointing [respondent] Jose, Jr., as the new regular administrator of Jose, Sr.'s estate.
>
> Jurisprudence has long held that the selection of an administrator lies in the sound discretion of the trial court. The determination of a person's suitability for the office of judicial administrator rests, to a great extent, in the sound judgment of the court exercising the power of appointment and said judgment is not to be interfered with on appeal unless the said court is clearly in error.
>
> The RTC did not err in appointing Jose, Jr. as the new administrator, even though his previous prayer for appointment was denied. Notably, by virtue of Edward's death, the office of the regular administrator of Jose, Sr.'s estate was vacated, and it was

Supreme Court E-Library

within the jurisdiction of the RTC, as probate court, to appoint a new administrator.[23]

Evidently, the Court of Appeals like the RTC in its second order, closed its eyes on the facts detailed by the RTC in the first order.

Considering the two (2) sets of conflicting rulings of the RTC and the Court of Appeals in the two stages of this litigation, we put into proper perspective the 13 December 1991 Order of the RTC appointing Edward over Jose, Jr. as regular administrator of their father's estate, which Order was upheld by us in G.R. No. 123883.

Section 1, Rule 78 of the Rules of Court provides for the general disqualification of those who wish to serve as administrator:

SECTION 1. *Who are incompetent to serve as executors or administrators*.— No person is competent to serve as executor or administrator who:

(a) Is a minor;
(b) Is not a resident of the Philippines; and
(c) Is in the opinion of the court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude.

Section 6 of the same rule, on the other hand, lists an order of preference in instances when there is a contest of who should be appointed administrator:

SEC. 6. *When and to whom letters of administration granted*.— If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving spouse, or next of kin, or both, in the discretion of the court, or to such person as such surviving spouse, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving spouse, or next of kin, or the person selected by them, be incompetent or unwilling, or if the surviving spouse, or

[23] *Id*. at 67-68.

Supreme Court E-Library

next of kin, neglects for thirty (30) days after the death of the person to apply for the administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select.

Because Edward and Jose, Jr. are both compulsory heirs of Jose, Sr., they were, at the time the issue of administration first cropped, equally preferred to administer Jose, Sr.'s estate. Necessarily, the courts also delved into the question of their suitableness and fitness to serve as administrator, preferring one over the other, framing it as Edward being more fit and suited to be administrator:

1. Edward has kept the Marcelo family corporations and his own in good financial condition;
2. The trust reposed by the decedent on Edward who voted on Jose, Sr.'s behalf in a Marcelo corporation; and
3. Edward being made a co-signatory for money deposited for Jose, Jr.'s own children.

Plainly, the RTC in its Order dated 13 December 1991, found Edward competent to serve as regular administrator, more competent than Jose, Jr., preferred despite equal status in the Order of Preference, manifesting none of the disqualifications set by law. Still and all, the same Order likewise judged Jose, Jr.'s suitableness and fitness, or lack thereof, for the office of administrator, albeit in comparison with Edward and not with the rest of Jose, Sr.'s children. Jose, Jr. was not what Edward was. The fact however, that Edward was made co-signatory for money deposited for Jose, Jr.'s own children is a telling commentary against Jose, Jr.'s competence, if not integrity.

Then too, the RTC in the original order made a specific finding, "[viewing it] with deep concern," Jose, Jr.'s handling of the records of the Marcelo Group of Companies. It euphemistically called taking of the records evidencing liabilities of the decedent as "borrowed/taken." However, the RTC noted that such cannot be justified as the records and other pertinent documents taken

Supreme Court E-Library

"do not form part of the estate of Jose P. Marcelo, Sr. but to the corporation from where they were taken."

Contrary to the recent rulings of the RTC and the Court of Appeals appointing Jose, Jr. as administrator, there is a previous and categorical ruling on Jose, Jr.'s fitness to serve as such:

> It is Jose T. Marcelo's position that he is more competent, qualified and suitable for the position of regular administrator. This, above all else is the main thrust of this second motion for reconsideration. However, the court in the exercise of its sound discretion after a consideration of the evidence adduced by both parties, ruled otherwise and instead appointed Edward T. Marcelo as regular administrator.
>
> x x x True, Jose T. Marcelo, Jr. was initially appointed as Special Administrator of the estate of their deceased father but the same was without the benefit of a hearing on the qualifications of the parties concerned. x x x This did not however confer on Jose Marcelo, Jr. as Special Administrator a better right to the office of regular administrator. x x x.
>
> x x x x x x x x x x x x
>
> The third assigned error raised by [Jose, Jr.] "that both trial judges erred in not appointing Special Administrator Jose T. Marcelo, Jr. as Regular Administrator considering his tested probity and competence as special administrator, his good name and integrity in accordance with the evidence," is devoid of merit, as already discussed earlier.
>
> The findings of the lower court in this regard deserve full consideration x x x.[24]

Undoubtedly, there has been a declaration that Jose, Jr. is unfit and unsuitable to administer his father's estate.

To obviate further delay in the settlement of Jose, Sr.'s estate, we emphasize that such is already at the liquidation and distribution stage which project of partition had long been conformed to by the parties.

We note that this case has been unnecessarily prolonged and resulted in added litigation by the non-payment of estate

---

[24] *Id.* at 148-149 and 159.

Supreme Court E-Library

taxes which is the ultimate responsibility of the heirs having inchoate right in the estate, should there be assets remaining, to be partitioned and distributed. The inheritance tax is an obligation of the estate, indirectly the heirs:

SECTION 1. *When order for distribution of residue made.* – When the debts, xxx, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, xxx.

No distribution shall be allowed until payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.[25]

Given the factual considerations that led to the prior findings on the unfitness of Jose, Jr. to act as regular administrator; the Affidavit of Helen[26] preferring George as administrator; and the conformity on record of the rest of Jose, Sr.'s heirs to George's administration as reflected in petitioners' *Appellants' Brief* before the Court of Appeals:

More importantly, consistent with Section 6, Rule 78 of the Rules of Court, not only is George the eldest son of Jose, Sr. and, therefore, his most immediate kin, he has, moreover, been chosen by the rest of the heirs of Jose, Sr. to perform the functions of an administrator. In this regard, in addition to George and the heirs of Edward, Helen executed an Affidavit to manifest her opposition to Jose, Jr. and to support the appointment of George and herself as joint administrators, a copy of which was given to the [Court of Appeals.][27]

we thus issue Letters of Administration to George to facilitate and close the settlement of Jose, Sr.'s estate.[28]

---

[25] Rule 90 Rules of Court.

[26] *Rollo*, p. 789.

[27] *Id*. at 40.

[28] See our ruling in *Liwanag-Reyes v. Court of Appeals*, 158 Phil. 1054 (1974), where we affirmed the lower court's appointment of administrator considering the parties' execution of a document all agreeing on the appointment of Victor Reyes.

Supreme Court E-Library

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. CV No. 95219 and the Order dated 6 January 2010 of the Regional Trial Court, Branch 76, Quezon City in S.P. Proc. No. Q-88-1448 are **REVERSED** and **SET ASIDE**. Letters of Administration shall issue to George T. Marcelo upon payment of a bond to be set by the Regional Trial Court, Branch 76, Quezon City. The Regional Trial Court, Branch 76, Quezon City is likewise directed to complete the settlement of the decedent's, Jose T. Marcelo, Sr.'s, estate with dispatch starting from an Order setting a deadline for the parties to pay the estate taxes and to inform this Court when such has been paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr.,* JJ.,* concur.

THIRD DIVISION

[G.R. No. 210831. November 26, 2014]

SPOUSES TAGUMPAY N. ALBOS and AIDA C. ALBOS, *petitioners, vs.* **SPOUSES NESTOR M. EMBISAN and ILUMINADA A. EMBISAN, DEPUTY SHERIFF MARINO V. CACHERO, and the REGISTER OF DEEDS OF QUEZON CITY,** *respondents*.

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTEREST; THE COMPOUNDING OF INTEREST SHOULD BE IN WRITING.— Article 1956 of the New Civil Code, which refers to monetary interest, provides: **Article 1956.** No interest shall be due unless it has been expressly stipulated in writing. x x x Given the circumstances, We rule that the first requirement—

* Per Special Order No. 1885 dated 24 November 2014.