

SECOND DIVISION

[G.R. No. 203770, November 23, 2016]

**MANUELA AZUCENA MAYOR, PETITIONER, VS. EDWIN TIU AND
DAMIANA CHARITO MARTY, RESPONDENTS.**

DECISION

MENDOZA, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the October 5, 2011^[1] and September 24, 2012^[2]

Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 06256, which dismissed the petition filed by Remedios Tiu (*Remedios*) and Manuela Azucena Mayor (*Manuela*) for procedural infirmities. The said CA petition challenged the January 20, 2011^[3] and June 10, 2011^[4] Orders of the Regional Trial Court, Branch 6, Tacloban City (*RTC-Br. 6*), in **Sp. Proc. No. 2008-05-30**, a case for Probate of Last Will and Testament and Issuance of Letters of Testamentary.

The Antecedents:

On May 25, 2008, Rosario Guy-Juco Villasin Casilan (*Rosario*), the widow of the late Primo Villasin (*Primo*), passed away and left a holographic Last Will and Testament, ^[5] wherein she named her sister, Remedios Tiu (*Remedios*), and her niece, Manuela Azucena Mayor (*Manuela*), as executors. Immediately thereafter, Remedios and Manuela filed a petition for the probate of Rosario's holographic will^[6] with prayer for the issuance of letters testamentary (*probate proceedings*). The petition was raffled to the Regional Trial Court, Branch 9, Tacloban City (*RTC-Br. 9*) and docketed as **Sp. Proc. No. 2008-05-30**. They averred that Rosario left properties valued at approximately P2.5 million.

On May 29, 2008, respondent Damiana Charito Marty (*Marty*) claiming to be the adopted daughter of Rosario, filed a petition for letters of administration before the RTC, Branch 34, Tacloban City (*RTC-Br. 34*), docketed as **Sp. Proc. No. 2008-05-32**, but it was not given due course because of the probate proceedings. Per records, this dismissal is subject of a separate proceeding filed by Marty with the CA Cebu City, docketed as CA G.R. SP No. 04003.^[7]

On June 12, 2008, in its Order,^[8] the RTC-Br. 9 found the petition for probate of will filed by Remedios and Manuela as sufficient in form and substance and set the case for hearing.

Consequently, Marty filed her Verified Urgent Manifestation and Motion,^[9] dated June 23, 2008, stating that Remedios kept the decedent Rosario a virtual hostage for the past ten (10) years and her family was financially dependent on her which

led to the wastage and disposal of the properties owned by her and her husband, Primo. Marty averred that until the alleged will of the decedent could be probated and admitted, Remedios

and her ten (10) children had no standing to either possess or control the properties comprising the estate of the Villasins. She prayed for the probate court to: 1) order an immediate inventory of all the properties subject of the proceedings; 2) direct the tenants of the estate, namely, Mercury Drug and Chowking, located at Primrose Hotel, to deposit their rentals with the court; 3) direct Metrobank, P. Burgos Branch, to freeze the accounts in the name of Rosario, Primrose Development Corporation (*Primrose*) or Remedios; and 4) lock up the Primrose Hotel in order to preserve the property until final disposition by the court.

On July 8, 2008, Remedios and Manuela filed their Comment/Opposition^[10] to the urgent manifestation averring that Marty was not an adopted child of the Villasins based on a certification issued by the Office of the Clerk of Court of Tacloban City, attesting that no record of any adoption proceedings involving Marty existed in their records. They also argued that the probate court had no jurisdiction over the properties mistakenly claimed by Marty as part of Rosario's estate because these properties were actually owned by, and titled in the name of, Primrose. Anent the prayer to direct the tenants to deposit the rentals to the probate court, Remedios and Manuela countered that the probate court had no jurisdiction over properties owned by third persons, particularly by Primrose, the latter having a separate and distinct personality from the decedent's estate.

In her Reply,^[11] dated July 15, 2008, Marty cited an order of the Court of First Instance of Leyte (*CFI Leyte*) in SP No. 1239,^[12] claiming that as early as March 3, 1981, the veil of corporate entity of Primrose was pierced on the ground that it was a closed family corporation controlled by Rosario after Primo's death. Thus, Marty alleged that "piercing" was proper in the case of Rosario's estate because the incorporation of Primrose was founded on a fraudulent consideration, having been done in contemplation of Primo's death.

Further, on July 22, 2008, in her Opposition to the Petition for the Approval of the Will of the Late Rosario Guy-Juco Villasin Casilan,^[13] Marty impugned the authenticity of her holographic will.

Meanwhile, Edwin Tiu (*Edwin*), a son of Remedios, also filed his Opposition,^[14] dated June 13, 2008.

After a protracted exchange of pleadings, the parties submitted their respective memoranda.

The January 14, 2009 Order

In its January 14, 2009 Order,^[15] the RTC-Br. 9 granted the motion of Marty and appointed the OIC Clerk of Court as special administrator of the Estate. The Probate Court also ordered Mercury Drug and Chowking to deposit the rental income to the court and Metrobank to freeze the bank accounts mentioned in the motion of Marty. The doctrine of piercing the corporate veil was applied in the case considering that Rosario had no other properties that comprised her estate other than Primrose.

According to the probate court, for the best interest of whoever would be adjudged as the legal heirs of the Estate, it was best to preserve the properties from dissipation.

On January 22, 2009, Remedios and Manuela filed their Motion for Inhibition^[16] on the ground of their loss of trust and confidence in RTC-Br. 9 Presiding Judge Rogelio C. Sescon (*Judge Sescon*) to dispense justice. Later, they also filed their Motion for Reconsideration *Ad Cautelam*,^[17] dated February 3, 2009, arguing that Rosario's estate consisted only of shares of stock in Primrose and not the corporation itself. Thus, the probate court could not order the lessees of the corporation to remit the rentals to the Estate's administrator. With regard to the appointment of a special administrator, Remedios and Manuela insisted that it be recalled. They claimed that if ever there was a need to appoint one, it should be the two of them because it was the desire of the decedent in the will subject of the probate proceedings.

In its Order,^[18] dated March 27, 2009, the RTC-Br. 9 denied the motion for reconsideration for lack of merit and affirmed its January 14, 2009 Order. The presiding judge, Judge Sescon, also granted the motion for inhibition and ordered that the records of the case be referred to the RTC Executive Judge for reraffling. The case was later re-raffled to RTC-Br.6, Judge Alphinor C. Serrano, presiding judge.

Aggrieved by the denial of their motion for reconsideration, Remedios and Manuela filed a petition for *certiorari* with the CA in Cebu City, docketed as CA-G.R. S.P. No. 04254, assailing the January 14, 2009 and March 27, 2009 Orders of the RTC-Br. 9.^[19]

Ruling of the CA

In its October 16, 2009 Decision,^[20] the CA *reversed* the assailed orders of the RTC Br. 9, except as to the appointment of a special administrator insofar as this relates to properties specifically belonging to the "Estate." It held that **Primrose had a personality separate and distinct from the estate of the decedent and that the probate court had no jurisdiction to apply the doctrine of piercing the corporate veil.**

According to the CA, nowhere in the assailed orders of the probate court was it stated that its determination of the title of the questioned properties was only for the purpose of determining whether such properties ought to be included in the inventory. When the probate court applied the doctrine of "piercing," in effect, it adjudicated with finality the ownership of the properties in favor of the Estate. The CA stated that RTC-Br. 9 had no jurisdiction to adjudicate ownership of a property claimed by another based on adverse title; and that questions like this must be submitted to a court of general jurisdiction and not to a probate court.

The CA added that assuming that the probate court's determination on the issue of ownership was merely intended to be provisional, Marty's contentions still had no merit. The properties, which she claimed to be part of the estate of Rosario and over which she claimed co-ownership, comprised of real properties registered under the Torrens system. As such, Primrose was considered the owner until the titles to those properties were nullified in an appropriate ordinary action. The CA further stated

that the RTC erroneously relied on the order issued by the CFI Leyte in 1981, in the probate proceedings involving the estate of Primo. Whatever determination the CFI made at the time regarding the title of the properties was merely provisional, hence, not conclusive as to the ownership.

By reason of the favorable decision by the CA, Remedios and Manuela filed their Motion to Partially Revoke the Writ of Execution Enforcing the January 14, 2009 Order of the Honorable Court and Manifestation in Compliance with the October 21, 2009 Order (*Ad Cautelam*),^[21] dated October 27, 2009.

In its Order,^[22] dated November 17, 2009, the RTC-Br. 6 *partially granted* the motion as it revoked the power of the special administrator to oversee the day-to-day operations of Primrose. It also revoked the order with respect to Mercury Drug and Chowking, reasoning out that the said establishments dealt with Primrose, which had a personality distinct and separate from the estate of the decedent. In the said order, Atty. Blanche A. Sa1ino nominated by oppositors Marty and Edwin, was appointed special administrator to oversee the day-to-day operations of the estate. The same order also upheld the January 14, 2009 Order, as to the conduct and inventory of all the properties comprising the estate.

This order was not questioned or appealed by the parties.

Omnibus Motion

On September 24, 2010, or almost ten (10) months after the November 17, 2009 Order of the probate court was issued, Marty, together with her new counsel, filed her Omnibus Motion,^[23] praying for the probate court to: 1) order Remedios and Manuela to render an accounting of all the properties and assets comprising the estate of the decedent; 2) deposit or consign all rental payments or other passive income derived from the properties comprising the estate; and 3) prohibit the disbursement of funds comprising the estate of the decedent without formal motion and approval by the probate court.

Ruling of the RTC-Br. 6

In its January 20, 2011 Order, the RTC-Br. 6 granted Marty's Omnibus Motion. Although it agreed with the October 16, 2009 CA Decision reversing the January 14, 2009 Order of the RTC-Br. 9, nonetheless, it acknowledged the urgency and necessity of appointing a special administrator. According to the probate court, considering that there was clear evidence of a significant decrease of Rosario's shares in the outstanding capital stock of Primrose,^[24] prudence dictated that an inquiry into the validity of the transfers should be made. A final determination of this matter would be outside the limited jurisdiction of the probate court, but it was likewise settled that the power to institute an action for the recovery of a property claimed to be part of the estate was normally lodged with the executor or administrator. Thus, the probate court disposed:

WHEREFORE, for the reasons aforesated, and so as not to render moot any action that the special administrator, or the regular administrator upon the latter's qualification and appointment, may deem appropriate to take on the matter (i.e. Whether or not to institute in the name of the

estate the appropriate action for the recovery of the shares of stock), this Court hereby **GRANTS** Oppositor Marty's Omnibus Motion, dated September 24, 2010, and thus hereby:

1. DIRECTS petitioners, either individually or jointly, to: **(a) RENDER AN ACCOUNTING** of all the properties and assets comprising the estate of the decedent that may have come into their possession; and, **(b) DEPOSIT OR CONSIGN** all the rentals payments or such other passive incomes from the properties and assets registered in the name of Primrose Development Corporation, including all income derived from the Primrose Hotel and the lease contracts with Mercury Drug and Chowking Restaurant, both within fifteen (15) days from receipt of this Order;

2. DIRECTS the Special Administrator to take possession and charge of the properties comprising the decedent's estate, specially those pertaining to the shareholding of the decedent in Primrose Development Corporation, to determine whether or not action for the recovery of the shares of stock supposedly transferred from the decedent to petitioners Remedios Tiu, Manuela Azucena Mayor should be instituted in the name of the estate against the said transferees and to submit a Report on the foregoing matters to this Court, within fifteen (15) days from receipt of this Order; and,

3. ORDERS that no funds comprising the estate of the decedent shall be disbursed without formal Motion therefor, with the conformity of the Special Administrator, duly approved by this Court.

SO ORDERED.^[25] [Underscoring supplied]

The partial motion for reconsideration of the above order filed by Remedios and Manuela was denied in the other assailed order of the RTC-Br. 6, dated June 10, 2011.^[26]

Dissatisfied, Remedios and Manuela availed of the special civil action of *certiorari* under Rule 65, and filed a petition before the CA.

Action by the CA

The CA, however, in its October 5, 2011 Resolution,^[27] dismissed the same based on the following infirmities: 1) there was no proper proof of service of a copy of the petition on the respondents which was sent by registered mail; 2) petitioners failed to indicate on the petition the material date when the motion for reconsideration was filed; 3) the copy of the assailed order was not certified true and correct by the officer having custody of the original copy; and 4) the serial number of the commission of the notary public, the province-city where he was commissioned, the office address of the notary public and the roll of attorney's number were not properly indicated on the verification and certification of non-forum shopping.

Remedios and Manuela moved for reconsideration of the assailed CA resolution, but to no avail, as the appellate court denied the motion in its September 24, 2012 Resolution.