

THIRD DIVISION

[G.R. No. 183050, January 25, 2012]

**ADVENT CAPITAL AND FINANCE CORPORATION, PETITIONER,
VS. NICASIO I. ALCANTARA AND EDITHA I. ALCANTARA,
RESPONDENTS.**

D E C I S I O N

ABAD, J.:

This case is about the validity of a rehabilitation court's order that compelled a third party, in possession of money allegedly belonging to the debtor of a company under rehabilitation, to deliver such money to its court-appointed receiver over the debtor's objection.

The Facts and the Case

On July 16, 2001 petitioner Advent Capital and Finance Corporation (Advent Capital) filed a petition for rehabilitation^[1] with the Regional Trial Court (RTC) of Makati City.^[2] Subsequently, the RTC named Atty. Danilo L. Concepcion as rehabilitation receiver.^[3] Upon audit of Advent Capital's books, Atty. Concepcion found that respondents Nicasio and Editha Alcantara (collectively, the Alcantaras) owed Advent Capital P27,398,026.59, representing trust fees that it supposedly earned for managing their several trust accounts.^[4]

Prompted by this finding, Atty. Concepcion requested Belson Securities, Inc. (Belson) to deliver to him, as Advent Capital's rehabilitation receiver, the P7,635,597.50 in cash dividends that Belson held under the Alcantaras' Trust Account 95-013. Atty. Concepcion claimed that the dividends, as trust fees, formed part of Advent Capital's assets. Belson refused, however, citing the Alcantaras' objections as well as the absence of an appropriate order from the rehabilitation court.^[5]

Thus, Atty. Concepcion filed a motion before the rehabilitation court to direct Belson to release the money to him. He said that, as rehabilitation receiver, he had the duty to take custody and control of Advent Capital's assets, such as the sum of money that Belson held on behalf of Advent Capital's Trust Department.^[6]

The Alcantaras made a special appearance before the rehabilitation court^[7] to oppose Atty. Concepcion's motion. They claimed that the money in the trust account belonged to them under their Trust Agreement^[8] with Advent Capital. The latter, they said, could not claim any right or interest in the dividends generated by their investments since Advent Capital merely held these in trust for the Alcantaras, the trustors-beneficiaries. For this reason, Atty. Concepcion had no right to compel the delivery of the dividends to him as receiver. The Alcantaras concluded that,

under the circumstances, the rehabilitation court had no jurisdiction over the subject dividends.

On February 5, 2007 the rehabilitation court granted Atty. Concepcion's motion.^[9] It held that, under Rule 59, Section 6 of the Rules of Court, a receiver has the duty to immediately take possession of all of the corporation's assets and administer the same for the benefit of corporate creditors. He has the duty to collect debts owing to the corporation, which debts form part of its assets. Complying with the rehabilitation court's order and Atty. Concepcion's demand letter, Belson turned over the subject dividends to him.

Meanwhile, the Alcantaras filed a special civil action of *certiorari* before the Court of Appeals (CA), seeking to annul the rehabilitation court's order. On January 30, 2008 the CA rendered a decision,^[10] granting the petition and directing Atty. Concepcion to account for the dividends and deliver them to the Alcantaras. The CA ruled that the Alcantaras owned those dividends. They did not form part of Advent Capital's assets as contemplated under the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules).

The CA pointed out that the rehabilitation proceedings in this case referred only to the assets and liabilities of the company proper, not to those of its Trust Department which held assets belonging to other people. Moreover, even if the Trust Agreement provided that Advent Capital, as trustee, shall have first lien on the Alcantara's financial portfolio for the payment of its trust fees, the cash dividends in Belson's care cannot be summarily applied to the payment of such charges. To enforce its lien, Advent Capital has to file a collection suit. The rehabilitation court cannot simply enforce the latter's claim by ordering Belson to deliver the money to it.^[11]

The CA denied Atty. Concepcion and Advent Capital's motion for reconsideration,^[12] prompting the filing of the present petition for review under Rule 45.

The Issue Presented

The sole issue in this case is whether or not the cash dividends held by Belson and claimed by both the Alcantaras and Advent Capital constitute corporate assets of the latter that the rehabilitation court may, upon motion, require to be conveyed to the rehabilitation receiver for his disposition.

Ruling of the Court

Advent Capital asserts that the cash dividends in Belson's possession formed part of its assets based on paragraph 9 of its Trust Agreement with the Alcantaras, which states:

9.Trust Fee: Other Expenses - As compensation for its services hereunder, the TRUSTEE shall be entitled to a trust or management fee of 1 (one) % per annum based on the quarterly average market value of the Portfolio or a minimum annual fee of P5,000.00, whichever is higher. The said trust or management fee shall automatically be deducted from the Portfolio at the end

of each calendar quarter. The TRUSTEE shall likewise be reimbursed for all reasonable and necessary expenses incurred by it in the discharge of its powers and duties under this Agreement, and in all cases, the TRUSTEE shall have a first lien on the Portfolio for the payment of the trust fees and other reimbursable expenses.

According to Advent Capital, it could automatically deduct its management fees from the Alcantaras' portfolio that they entrusted to it. Paragraph 9 of the Trust Agreement provides that Advent Capital could automatically deduct its trust fees from the Alcantaras' portfolio, "at the end of each calendar quarter," with the corresponding duty to submit to the Alcantaras a quarterly accounting report within 20 days after.^[13]

But the problem is that the trust fees that Advent Capital's receiver was claiming were for past quarters. Based on the stipulation, these should have been deducted as they became due. As it happened, at the time Advent Capital made its move to collect its supposed management fees, it neither had possession nor control of the money it wanted to apply to its claim. Belson, a third party, held the money in the Alcantaras' names. Whether it should deliver the same to Advent Capital or to the Alcantaras is not clear. What is clear is that the issue as to who should get the same has been seriously contested.

The practice in the case of banks is that they automatically collect their management fees from the funds that their clients entrust to them for investment or lending to others. But the banks can freely do this since it holds or has control of their clients' money and since their trust agreement authorized the automatic collection. If the depositor contests the deduction, his remedy is to bring an action to recover the amount he claims to have been illegally deducted from his account.

Here, Advent Capital does not allege that Belson had already deducted the management fees owing to it from the Alcantaras' portfolio at the end of each calendar quarter. Had this been done, it may be said that the money in Belson's possession would technically be that of Advent Capital. Belson would be holding such amount in trust for the latter. And it would be for the Alcantaras to institute an action in the proper court against Advent Capital and Belson for misuse of its funds.

But the above did not happen. Advent Capital did not exercise its right to cause the automatic deduction at the end of every quarter of its supposed management fee when it had full control of the dividends. That was its fault. For their part, the Alcantaras had the right to presume that Advent Capital had deducted its fees in the manner stated in the contract. The burden of proving that the fees were not in fact collected lies with Advent Capital.

Further, Advent Capital or its rehabilitation receiver cannot unilaterally decide to apply the entire amount of cash dividends retroactively to cover the accumulated trust fees. Advent Capital merely managed in trust for the benefit of the Alcantaras the latter's portfolio, which under Paragraph 2^[14] of the Trust Agreement, includes not only the principal but also its income or proceeds. The trust property is only fictitiously attributed by law to the trustee "to the extent that the rights and powers