

## **THY WILL BE DONE by Atty. Angelo M. Cabrera**

### **PERPETUAL TRUSTS CREATED BY WILL**

I read an interesting article from the website of ABC News concerning the last will of a fabulously rich lumber baron named Wellington Burt, who died in 1919 at age 87 – a good 93 years ago. You would think that his descendants – from his children to his great-great grandchildren – had been enjoying his wealth through the last nine decades. Unfortunately, that has not been the case because for some reasons not described in his will, Burt stipulated that the majority of his fortune would be distributed 21 years after his last surviving grandchild's death.

Since his death, Burt's relatives tried to break the trust in court unsuccessfully. Danielle Mayoras, author of the book, *Trial & Heirs: Famous Fortune Fights!*, said she has never heard of a will or trust with a similar distribution. She suspects that the reason Burt chose 21 as the year stipulation was because of the common law's Rule of Perpetuities. That rule forbids leaving money to anyone 21 years after the death of the last identifiable individual living at the time the will or trust was created.

That last identifiable living individual at the time Burt created the will was a granddaughter who eventually died in 1989. Thus, the fortune, estimated at \$100 million to \$110 million, was due to be distributed only last year.

In the Philippines, a case involving a perpetual trust was decided upon by the Supreme Court in 2009. A perusal of both cases, although fairly similar, would show the difference in the laws of the two countries concerning the so-called perpetual trusts.

The Philippine case involved the estate of MR, who died in 1960 leaving a last will and testament. Having died without any ascendant or descendant, she had no compulsory heirs to consider so she was completely free to dispose of her properties without regard to legitimes (rightful shares of compulsory heirs). Some of MR's testamentary dispositions contemplated the creation of trust to manage the income from her properties for distribution to beneficiaries specified in the will with a stipulation that explicitly prohibits the alienation or mortgage of the properties specified for placement under perpetual administration of the trust.

MR's collateral heirs challenged the said stipulation on the basis of Article 870 of the Civil Code that provides that the dispositions of the testator declaring all or part of the estate inalienable for more than twenty years are void.

The Supreme Court ruled then that the trust should be upheld, but only in so far as the first twenty year period is concerned. It held that since the twenty year period had not yet lapsed, the wishes of the testatrix ought to be respected.

Almost four decades later, the heirs of one of the beneficiaries of the trust who was mentioned in the decedent's will, moved to dissolve the trust on the decedent's estate, which they argued had been in existence for more than twenty years.

The Supreme Court agreed that the trust must now be dissolved and the remaining properties constituting the perpetual trust distributed to the intestate heirs of MR, the nearest relative of the deceased entitled to receive the remaining properties. It clarified that while the heirs of the

beneficiaries of the trust were correct in moving for the dissolution of the trust after twenty years, they are not necessarily declared as intestate heirs of the deceased noting that nowhere in the will can it be ascertained that the decedent intended that any of the trust's designated beneficiaries to inherit these properties. It remanded the case to the RTC to make a determination of the intestate heirs. (G.R. No. 168660, June 30, 2009)

Here lies the difference between the two laws concerning perpetual trusts based on these two cases: In the US case, "perpetuity" is considered to be up to 21 years after the death of the last identifiable individual living at the time the will or trust was created. In the Philippines, perpetuity is only up to 20 years counted from the time of death of the testator.

Clear in either case is that there is really no such thing as perpetual trust created by will in the sense that we commonly understand the word perpetual to mean everlasting or enduring forever. In other words, even if a perpetual trust is created by will, its longevity is controlled and limited by law.

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