Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

IN THE MATTER OF THE PETITION FOR THE PROBATE OF THE WILL OF CONSUELO SANTIAGO GARCIA

CATALINO TANCHANCO AND RONALDO TANCHANCO,
Petitioners,

versus

NATIVIDAD GARCIA SANTOS,
Respondent.

G.R. No. 204793

Present:

HERNANDO, *J.*,
Acting Chairperson,
GESMUNDO,*
INTING,
DELOS SANTOS, and
GAERLAN,** *JJ.*

Promulgated:

08 JUN 2020

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DECISION

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the June 25, 2012 Decision[2] and December 4, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 89593 which reversed the May 31, 2004 Decision[4] of Branch 115 of the Regional Trial Court (RTC) of Pasay City in Spec. Proc. Nos. 97-4243 and 97-4244 denying the probate of the last will and testament of the decedent, Consuelo Santiago Garcia (Consuelo).

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* Designated as additional member vice Senior Associate Justice Estela M. Perlas-Bernabe who recused due to prior action in the Court of Appeals per Raffle dated February 19, 2020.

** Designated Additional Member of the Second Division per Special Order No. 2780 dated May 11. 2020.

[1] *Rollo*, pp. 9-51.

[2] Id. at 52-80; penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier (now a member of this Court).

[3] Id. at 81-82.

[4] Id. at 342-344; penned by Presiding Judge Francisco G. Mendiola.

The Antecedents

Consuelo was married to Anastacio Garcia (Anastacio) who passed away on August 14, 1985. They had two daughters, Remedios Garcia Tanchanco (Remedios) and Natividad Garcia Santos (Natividad). Remedios predeceased Consuelo in 1985 and left behind her children, which included Catalino Tanchanco (Catalino) and Ronaldo Tanchanco (Ronaldo, collectively Tanchancos).[5]

On April 4, 1997, Consuelo, at 91 years old, passed away[6] leaving behind an estate consisting of several personal and real properties.[7]

On August 11, 1997, Catalino filed a petition[8] before the RTC of Pasay City to settle the intestate estate of Consuelo which was docketed as Spec. Proc. Case No. 97-4244 and raffled to Branch 113. Catalino alleged that the legal heirs of Consuelo are: Catalino, Ricardo, Ronaldo and Carmela, all surnamed Tanchanco (children of Remedios), and Melissa and Gerard Tanchanco (issues of Rodolfo Tanchanco, Remedios' son who predeceased her and Consuelo), and Natividad, the remaining living daughter of Consuelo. Catalino additionally alleged that Consuelo's properties are in the possession of Natividad and her son, Alberto G. Santos (Alberto), who have been dissipating and misappropriating the said properties. Withal, Catalino prayed (1) for his appointment as the special administrator of Consuelo's intestate estate and the issuance of letters of administration in his favor; (2) for a conduct of an inventory of the estate; (3) for Natividad and all other heirs who are in possession of the estate's properties to surrender the same and to account for the proceeds of all the sales of Consuelo's assets made during the last years of her life; (4) for all heirs and persons having control of Consuelo's properties be prohibited from disposing the same without the court's prior approval; (5) for Natividad to produce Consuelo's alleged will to determine its validity; (6) for Natividad to desist from disposing the properties of Consuelo's estate; and (7) for other reliefs and remedies.[9]

Natividad filed a Motion to Dismiss[10] stating that she already filed a petition[11] for the probate of the Last Will and Testament of Consuelo before Branch 115 of the RTC of Pasay City which was docketed as Spec. Proc. Case No. 97-4243. Natividad asked that Consuelo's Last Will and Testament, entitled *Huling Habilin at Pagpapasiya ni Consuelo Santiago Garcia*,[12] be allowed and approved. Moreover, as the named executrix in the will,

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[5] Id. at 53.
[6] Id. at 99.
[7] Id. at 54.
[8] Id. at 83-88, "In Re: Estate of Consuelo Santiago Garcia."
[9] Id. at 54-55.
[10] Id. at 89-93.
[11] Id. at 94-98; "In the Matter of the Petition for the Probate of the Will of Consuelo Santiago Garcia."
[12] Id. at 100-104.

Natividad prayed that letters testamentary be issued in her favor.

The Tanchancos filed an Opposition[13] to Natividad's petition for probate alleging that the will's attestation clause did not state the number of pages and that the will was written in *Tagalog*, and not the English language usually used by Consuelo in most of her legal documents. They also pointed out that Consuelo could not have gone to Makati where the purported will was notarized considering her failing health and the distance of her residence in Pasay City. Moreover, they alleged that Consuelo's signature was forged. Thus, they prayed for the disallowance of probate and for the proceedings to be converted into an intestate one.

However, Natividad contended that there was substantial compliance with Article 805 of the Civil Code. Although the attestation clause did not state the number of pages comprising the will, the same was clearly indicated in the acknowledgment portion. Furthermore, the Tanchancos' allegations were not supported by proof.[14] Conversely, the Tanchancos rebutted that the number of pages should be found in the body of the will and not just in the acknowledgment portion.[15]

Eventually, the two cases (Spec. Proc. Case Nos. 97-4243 and 97-4244) were consolidated before Branch 115 of the RTC of Pasay City.[16] Hearings commenced.

The subject will was witnessed by Atty. Kenny H. Tantuico (Atty. Tantuico), Atty. Ma. Isabel C. Lallana (Atty. Lallana), and Atty. Aberico T. Paras (Atty. Paras) and notarized by Atty. Nunilo O. Marapao, Jr. (Atty. Marapao).

Atty. Marapao testified that he specifically remembered the will in question because it was his first time to notarize a will written in *Tagalog*. He was familiar with the other witnesses and their signatures because they were his colleagues at Quasha Ancheta Peña and Nolasco (Quasha Law Office) and because he was present during the signing of the will. He also identified Consuelo's signature as he was present when she signed the will. [17]

Atty. Marapao averred that he assisted Atty. Lallana in drafting the will. He described Consuelo as very alert and sane, and not suffering from any ailment at the time. The will was written in *Tagalog* at the request of Consuelo although she was conversant in English. Their usual practice during the execution of a will is to ask the testator some questions to determine whether he or she is of sound mind. If they find everything in order, they would sign the will and then let the testator sign the same. Subsequently, the

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[13] Id. at 105-111.
[14] Id. at 114-115.
[15] Id. at 117.
[16] Id. at 55, 342.
[17] TSN, May 19, 1999, pp. 7-11.

will would be notarized.[18]

Atty. Paras identified the signatures of Atty. Lallana and Atty. Tantuico[19] as well as that of Atty. Marapao.[20] Likewise, he affirmed Consuelo's signature in the will as he saw her sign the will.[21] He additionally confirmed that the attesting witnesses asked Consuelo probing questions to determine her state of mind and whether she was executing the will voluntarily.[22] To prove her identity, Consuelo showed her residence certificate and passport.[23] Atty. Paras recalled that Consuelo was not accompanied by anyone in the conference room.[24]

Similarly, Atty. Tantuico affirmed his signature in the will as well as that of Atty. Paras' and Atty. Lallana's as attesting witnesses, together with the signatures of Consuelo[25] and Atty. Marapao.[26] He confirmed that they propounded questions to Consuelo to determine the soundness of her mind.[27] Consuelo produced her residence certificate and passport to prove her identity.[28] Consuelo's will was the first will that he encountered written in *Tagalog* and he ascertained if Consuelo was comfortable with the said dialect.[29]

Atty. Tantuico stated that Consuelo looked younger than her actual age at the time of the execution of the will and that she could speak English. Consuelo was alone in the conference room and understood the will that she signed. Likewise, none of Consuelo's relatives was made a witness to the will.[30]

In her Deposition Upon Written Interrogatories,[31] Atty. Lallana asserted that she was a friend of Consuelo's family. She confirmed that she drafted the will and was one of the witnesses to its execution. The will was signed and executed in the conference room of Quasha Law Office with all the witnesses present to observe each other sign the will. She likewise identified Consuelo's signature in the will as well as those of the other witnesses who were her co-workers at Quasha Law Office. She had seen Consuelo's signatures in other occasions prior to the execution of the will.

Atty. Lallana narrated that she met Consuelo at the lobby of Quasha

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[18] Id. at 15-19.
[19] TSN, June 8, 1999, pp. 10-11, 14-20.
[20] Id. at 13.
[21] Id. at 12.
[22] Id. at 24-26.
[23] Id. at 29.
[24] Id. at 33.
[25] TSN, June 15, 1999, pp. 4-6.
[26] Id. at 9.
[27] Id. at 13-14.
[28] Id. at 14-15.
[29] Id. at 13-17.
[30] Id. at 18-19.
[31] *Rollo*, pp. 203-209; Atty. Lallana was not residing in the Philippines at the time.

Law Office and accompanied her to the conference room. She asked Consuelo if the contents of the will reflected the latter's wishes, to which the latter replied in the affirmative. Afterwards, Atty. Lallana asked the other witnesses to join them in the conference room for the execution of the will. The witnesses then asked Consuelo about her state of mind and Atty. Marapao even joked with her regarding her personal circumstances. Atty. Lallana emphasized that the witnesses conversed with Consuelo in order to determine her mental capacity. Atty. Tantuico asked general questions regarding the will and after they were satisfied that Consuelo understood the import of the will, they signed the documents in each other's presence. After signing all the pages of the will, Atty. Marapao asked Consuelo to swear to the truth of the proceeding then notarized the document.

Atty. Lallana averred that Consuelo possessed full mental faculties during the drafting and execution of the will as shown by her responses to the questions propounded to her. She was in good physical condition appropriate for her age. Consuelo arrived at Quasha Law Office unaided and had the physical and mental stamina to sit through the review and execution of the will.

Atty. Lallana affirmed that the will is in *Tagalog*, the dialect which Consuelo used to communicate with her. They purposely used *Tagalog* to obviate any potential issues or questions regarding Consuelo's ability to understand the nature and the contents of the will. Atty. Lallana clarified that Consuelo informed her that she (Consuelo) had already distributed the bulk of her estate between her two daughters and that the properties subject of the will were the ones left in her control and possession.

In her cross-interrogatories,[32] Atty. Lallana clarified that she drafted the will upon the request of Consuelo whom she met several times at her (Consuelo's) residence in Pasay City. She always met with Consuelo in private for the purpose of drafting the will even if there were other relatives present in the same house. Although Consuelo was accompanied by her maid/companion (*alalay*) at the lobby of the Quasha Law Office, she was alone with the attesting witnesses and the notary public during the signing of the will. Consuelo wanted third parties to act as witnesses because she anticipated some of her grandchildren to oppose the will.

Atty. Lallana stated that Remedios already received her share in the inheritance prior to the execution of the will and before her demise in 1990. Thus, Atty. Lallana found no reason to collate Consuelo's properties. She emphasized that she discussed the rules of legitime to Consuelo and that preterition did not occur.

Atty. Lallana asked for the legal opinion of more senior lawyers in drafting the will. She concluded that Consuelo was very sharp and

[32] Id. at 210-217.

perceptive.

On the other hand, Ronaldo asserted that he had a close relationship with Consuelo before she was hospitalized[33] and insisted that Consuelo passed away without a will.[34] He contended that it was unusual for Consuelo to execute a will in *Tagalog* as she had always used the English language in her documents[35] although she spoke both English and *Tagalog*.[36] He alleged that Consuelo told him that there was no need to draft a will since the properties would just be divided between her two daughters.[37] He also mentioned other lawyers, such as Atty. Cornelio Hizon (Atty. Hizon), whom Consuelo previously transacted with but who were not affiliated with Quasha Law Office.[38]

During the second year of Consuelo's coma, Ronaldo met with Natividad, Alberto, Catalino, Atty. Hizon, and Lumen Santiago to ascertain if Consuelo executed a will. During the meeting, Natividad informed them that there was no will.[39] Moreover, he alleged that Consuelo cannot walk unaided as early as 10 years before the alleged execution of the will due to a previous accident.[40] Ronaldo stated that Consuelo was forgetful[41] and bad with directions and that she needed her security guard or driver and *alalay* to move around.[42] Consuelo was unhappy before her coma because Natividad sold her properties as well as questioned and restricted her actions.[43] Natividad, by a Special Power of Attorney, transferred properties before and during Consuelo's coma.[44] Consuelo's actions were very dependent on Natividad's approval as the latter supposedly intimidated the former.[45] Natividad only gave Consuelo an allowance and she (Natividad) controlled Consuelo's properties.[46]

Ronaldo asserted that the will was one-sided as most of the properties would be given to Natividad[47] and contrary to Consuelo's intention to equally distribute the properties between her two daughters. In drafting contracts, Consuelo is usually assisted by family lawyers or a close member of the family for guidance, and with the knowledge of the *alalay* or companions.[48]

Ronaldo conceded that Consuelo's signatures in the will were similar

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[33] TSN, June 20, 2001, p. 10.
[34] Id. at 18.
[35] Id. at 21-24.
[36] Id. at 30.
[37] Id. at 40-41.
[38] Id. at 25-30.
[39] Id. at 54-58.
[40] Id. at 82-84.
[41] Id. at 89.
[42] Id. at 86-87.
[43] Id. at 70-73.
[44] Id. at 73-74, 77-79.
[45] Id. at 90-94.
[46] Id. at 100-101.
[47] TSN, June 27, 2001, p. 4.
[48] Id. at 6-10.

with those in the Deed of Absolute Sale[49] (which Ronaldo claimed is authentic).[50] Consuelo was well-versed in *Tagalog* than English since she was from Bulacan and only finished Grade 6.[51] Ronaldo knew that Consuelo travelled abroad on April 15, 1986, July 27, 1988, April 9, 1989 and March 9, 1991, or near the time the will was executed.[52] The signatures on Consuelo's passport and on the will were similar although the signature in the will was "signed brokenly" while in the passport, "straight."[53] Also, Ronaldo acknowledged that in a particular photo dated March 29, 1991, Consuelo was standing alone and without assistance.[54]

Ronaldo affirmed that a grandson of Consuelo, Jumby or Celso (one of Natividad's sons), was a friend of Atty. Lallana in college.[55] Also, he agreed that he could not have monitored every movement or transaction entered into by Consuelo and that it was possible that Consuelo did not mention the existence of the will to him.[56]

Ronaldo maintained that Consuelo would always procure her residence certificate from Pasay City.[57] He averred that Consuelo would constantly ask for an explanation for legal terms which she could not understand. He then admitted that the *Tagalog* translation for legal terms were provided in the will.[58]

Emilio Layug, Jr. (Layug), then security aide of Consuelo,[59] denied accompanying Consuelo to Quasha Law Office in Makati City.[60] He averred that he would only accompany her on special occasions and whenever she decided to bring him along with her.[61] Consuelo could not leave the house without her companions, Nonita Legazpi and Anita Lozada,[62] and she could no longer walk alone and needed to use a wheelchair as she was weak.[63] He agreed that Natividad was Consuelo's favorite daughter. In 1987, Layug always accompanied Consuelo and her *alalay*.[64]

During the hearing for the appointment of a special administrator, Catalino alleged that he was Consuelo's favorite and that they had a close relationship.[65] He maintained that Consuelo told him that she did not execute

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[49] *Rollo*, pp. 331-332.
[50] TSN, July 3, 2001, pp. 10-11.
[51] Id. at 15-16.
[52] TSN, July 3, 2001, pp. 34-36; July 4, 2001, p. 6.
[53] TSN, July 4, 2001, pp. 11-12.
[54] Id. at 24-26.
[55] Id. at 29-30.
[56] Id. at 39-42.
[57] TSN, July 6, 2001, pp. 10-11.
[58] Id. at 20, 23-24.
[59] TSN, September 11, 2001, p. 17.
[60] Id. at 23.
[61] Id. at 26, 46-47.
[62] Id. at 30.
[63] Id at 26.
[64] TSN, September 18, 2001, pp. 17-18.
[65] TSN, October 9, 2001, pp. 40, 49.

a will since the inheritance will be divided between her two children.[66] He stated that the will was one-sided even when Consuelo had always been very fair.[67] Catalino questioned the signature of Consuelo in the will as it appeared to be "perfect" when it should be crooked since she was already 80 at the time.[68] He added that Consuelo's documents were all in English[69] and that she never engaged the services of Quasha Law Office before.[70] Consuelo did not leave the house on her own as she cannot walk alone[71] and was already very sickly in 1997 and needed an *alalay*.[72]

Catalino alleged that Natividad, after the burial of Consuelo, looted the things of Consuelo and declared "war" against the Tanchancos.[73] During a family meeting attended by his nephew, Jet Tanchanco, and the children of Natividad, he discovered that Natividad supposedly found a will in Consuelo's dresser.[74]

Catalino conceded that the signature in the will is similar to Consuelo's signature.[75] He likewise agreed that the signature in the passport was not crooked just like in the purported will, even when he claimed that by that age, Consuelo's signature should be crooked already.[76] In any case, during his cross-examination, Catalino was confronted with the inconsistency of the grounds they raised in their opposition to the probate of the will, as they alleged forgery with respect to Consuelo's signature in the will but at the same time alleged that undue duress was employed upon Consuelo to execute the will.[77]

Meanwhile, Natividad confirmed that she was in-charge of Consuelo's businesses during the latter's confinement in the hospital.[78] She had an "and/or" account with Consuelo and she administered Consuelo's properties.[79] In 1987, Consuelo was always accompanied by her *alalay* and she already needed assistance because she could not stand on her own.[80] Consuelo was friends with Atty. Lallana who prepared Consuelo's will sometime in 1987.[81]

Alberto, Natividad's son, testified that Ronaldo knew about the status of the shares of stocks which formed part of the estate as he was privy to the

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[66] Id. at 58.
[67] Id. at 64.
[68] Id. at 66-67.
[69] Id. at 69.
[70] Id. at 72.
[71] Id. at 75.
[72] Id. at 135.
[73] Id. at 99-102.
[74] Id. at 130, 133.
[75] TSN, October 26, 2001, p. 74.
[76] Id. at 80.
[77] TSN, October 22, 2002, pp. 40-41.
[78] TSN, January 16, 2002, p. 38.
[79] Id. at 41-42.
[80] TSN, April 30, 2002, pp. 6-9.
[81] *Rollo*, p. 356.

documents.[82] Moreover, he asserted that Consuelo, in 1987 or the same year the purported will was executed, travelled to the United States.[83] The purported will was found in the belongings of Consuelo.[84]

In an Order[85] dated May 31, 2002, the RTC appointed Catalino as the special administrator and set the bond at ₱1 Million. Natividad asked for a reconsideration[86] but it was denied by the RTC in an Order[87] dated February 17, 2003. Hence, on June 5, 2002, Letters of Administration were issued in favor of Catalino.[88]

The Ruling of the Regional Trial Court

In a May 31, 2004 Decision,[89] Branch 115 of the RTC of Pasay City found the purported will replete with aberrations. It noted that two attesting witnesses to the will and the notary public were all associates of a Makati-based law firm which is the counsel of Natividad in the instant case. Nobody among Consuelo's relatives witnessed the execution of the alleged will. Except for Natividad and her lawyers, no one knew that Consuelo ever executed a will during her lifetime. Layug testified that they never went to a law office in Makati City. The trial court found it unusual that an 81-year old sickly woman would go without her bodyguard or *alalay* to Makati City considering that she could no longer walk unaided and had to use a wheelchair.

Moreover, the RTC noted that the will's acknowledgment clause showed that Consuelo's residence was in Makati City and not in Pasay City where she actually resided most of her life. It found it preposterous that Consuelo would change her residence from Pasay City to Makati City just for the purpose of drafting a will, and then return to Pasay City after its execution.[90]

The RTC gave credence to Ronaldo's testimony that Consuelo declared that she had no will and that her properties would be equally divided between her two children. The RTC deemed it irregular when the purported will was suddenly produced only after Consuelo's death and not years earlier especially since it was allegedly executed 10 years before her death. Moreover, the will unconscionably favored Natividad as she was named as the executrix of the will and most of the properties were disposed in her favor. The trial court ruled that, taken as a whole, the will is dubious and should not be allowed probate.[91]

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[82] TSN, May 7, 2002, p. 40.
[83] TSN, May 9, 2002, p. 28.
[84] Id. at 41.
[85] *Rollo*, pp. 278-279.
[86] Id. at 280-288.
[87] Id. at 317-319.
[88] Id. at 56.
[89] *Supra*, note 4.
[90] Id. at 343-344.
[91] Id. at 344.

Aggrieved, Natividad appealed[92] to the CA.

The Ruling of the Court of Appeals

The CA, in its assailed June 25, 2012 Decision,[93] held that Article 960 of the Civil Code preferred testacy over intestacy. Also, according to Section 20, Rule 132 of the Rules of Court, the due execution and authenticity of a private document such as a will must be proved either by anyone who saw the document executed or written or by evidence of the genuineness of the signature or handwriting of the maker. Additionally, Section 11, Rule 76 provides that if the will is contested, all the subscribing witnesses and the notary, if present in the Philippines and not insane, must be produced and examined during the probate of the will. Deposition must be taken if all or some of the witnesses are not in the Philippines. Natividad complied with the foregoing by presenting the testimonies of two attesting witnesses, Atty. Tantuico and Atty. Paras, as well as that of Atty. Marapao who notarized the will. Deposition upon written interrogatories and cross-interrogatories on the written questions propounded by the Tanchancos' counsel were made upon Atty. Lallana as the third witness to the will.

The said witnesses admitted signing the will in the presence of each other and Consuelo in a conference room of Quasha Law Office in Makati City. Atty. Marapao averred that at the time of the execution of the will, Consuelo was very alert and sane and was not suffering from any physical ailment. Atty. Tantuico asserted that Consuelo was intelligent enough to read and understand the will that she executed. Atty. Lallana, through her deposition, identified the signatures on each and every page of Consuelo's will since she was familiar with the signatures of her former associates and that of Consuelo's given that she was present when the will was signed. Additionally, Atty. Lallana stated that during the execution of the will, Consuelo possessed full mental faculties, consistently responded to the questions of the witnesses regarding her personal circumstances, and was of sound mind and body.[94]

The appellate court held that the positive testimonies of the witnesses established the due execution and authenticity of the will especially when the Tanchancos could not present proof that the said witnesses are not credible or competent. It added that the witnesses are all lawyers who are not disqualified from being witnesses under the law except in cases relating to privileged communication arising from attorney-client relationship.[95]

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[92] Id. at 345-382; *see also:* CA *rollo*, pp. 56-57.
[93] *Supra*, note 2.
[94] Id. at 63-64.
[95] Id. at 64-65.

It noted that in the probate of the will, the authority of the court is limited to ascertaining the extrinsic validity of the will in that the testator, of sound mind, freely executed the will in accordance with the formalities prescribed by law. It found nothing extraordinary in Natividad's act of submitting the will for probate 10 years from its execution and after Consuelo's death especially since there is no law which obliges a testator to file a petition for probate of his or her will during his or her lifetime.[96]

The CA further found that while Consuelo figured in an accident which limited her mobility years before the execution of the contested will, the Tanchancos failed to substantiate their claim that it was impossible for Consuelo to move around outside her residence. Moreover, it noted that Consuelo travelled to the United States on two occasions more than a year before and then seven months after the contested will was executed. Thus, it was not impossible for Consuelo to travel from her residence in Pasay City to the law office in Makati City.[97]

Moreover, the appellate court held that a comparison of Consuelo's signatures in her 1986, 1988 and 1989 residence certificates and the contested will did not compellingly show that forgery was committed. It ruled that the Tanchancos failed to establish that Consuelo's signature was forged, considering that they only advanced their self-serving allegation of fraud.[98] Also, that non-relatives witnessed the execution of the will did not affect its due execution. It held that "the ruling of the court *a quo* that a perusal of the will even shows that it unconscionably favors [Natividad] when the decedent [Consuelo] not only named [Natividad] as executrix of the will but practically disposes of all the personal properties in her favor including, if not all, the remaining real properties, already involve [an] inquiry on the will's intrinsic validity which need not be inquired upon by the probate court."[99] Ergo, the CA held that it is not a rule that an extrinsically valid will is always intrinsically valid and that the trial court had prematurely ruled that Consuelo's will is also intrinsically invalid.[100]

The CA found that the Tanchancos failed to prove that Consuelo was of unsound mind when she executed the contested will. Likewise, they only presented self-serving allegations without presenting an expert witness that an 81-year-old woman does not have the legal testamentary capacity to distribute her properties to her heirs upon her death. Additionally, it held that no law requires the testator to execute the will in the presence of his or her heirs and relatives. It similarly ruled that the Tanchancos did not present proof that Consuelo could not understand *Tagalog*.[101]

The appellate court noted that while the attestation clause did not state

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[96] Id. at 65-67.
[97] Id. at 68-69.
[98] Id. at 69-70.
[99] Id. at 71.
[100] Id. at 71-72.
[101] Id. at 72-75.

the number of pages comprising the will, still, it is verifiable by examining the will itself, as the pages were duly numbered and signed by Consuelo and the instrumental witnesses. Moreover, the acknowledgment portion of the contested will states that "*Ang HULING HABILING ito ay binubuo ng lima (5) na dahon, kasama ang dahong kinaroroonan ng Pagpapatunay at Pagpapatotoong ito. SAKSI ang aking lagda at panatak pangnotaryo.*"[102] In fine, the appellate court found that there was substantial compliance with the requirements of Article 805 of the Civil Code. It held that since Consuelo named Natividad as the executrix of the will, such should be respected unless the appointed executor is incompetent, refuses the trust, or fails to give bond in which case the court may appoint another person to administer the estate.[103]

The CA declared that the will should be allowed probate. The dispositive portion of the appellate court's assailed Decision reads:

> **WHEREFORE**, premises considered, the 31 May 2004 Decision of the Regional Trial Court, Branch 115, Pasay City, is hereby **REVERSED** and **SET ASIDE** and a new one rendered allowing the probate of the *Huling Habilin at Pagpapasiya* ni Consuelo Santiago Garcia. Petitioner-appellant [Respondent] Natividad Garcia Santos is hereby appointed executor of the estate pursuant to the *Huling Habilin at Pagpapasiya* of the decedent.
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> Let the records of the instant case be remanded to the trial court of origin for the issuance of letters testamentary to the petitioner [respondent] Natividad Garcia Santos to serve as executor without bond.
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> **SO ORDERED.**[104]

The Tanchancos filed a motion for reconsideration[105] which was denied by the CA in a Resolution[106] dated December 4, 2012. Discontented, the Tanchancos elevated[107] this case before Us and raised the following grounds:

> **A.**
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> **THE HONORABLE COURT OF APPEALS ERRED WHEN IT ALLOWED THE PROBATE OF THE DECEDENT'S WILL DESPITE THE FINDINGS OF THE PROBATE COURT THAT THE WILL WAS A TOTAL FABRICATION BASED ON THE FOLLOWING CIRCUMSTANCES:**
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> 1. **DECEDENT WAS PHYSICALLY INCAPABLE OF EXECUTING THE WILL AT THE ALLEGED DATE AND PLACE OF EXECUTION THEREOF;**

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[102] Id. at 104.
[103] Id. at 75-79.
[104] Id. at 79.
[105] Id. at 445-463.
[106] Id. at 81-82.
[107] *Rollo*, pp. 9-51.

2. THE SIGNATURE OF THE DECEDENT IN THE WILL IS A FORGERY; AND

3. THE PURPORTED WILL IS REPLETE WITH FEATURES WHICH LEAD TO AN INDISPUTABLE CONCLUSION THAT THE WILL IS SIMULATED.

B.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT ALLOWED THE PROBATE OF THE DECEDENT'S WILL DESPITE THE FACT THAT THE WILL DOES NOT CONFORM TO THE FORMALITIES REQUIRED BY LAW UNDER ARTICLE 805 OF THE CIVIL CODE.

C.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT ALLOWED THE PROBATE OF THE DECEDENT'S WILL DESPITE CIRCUMSTANCES ALLEGED BY THE PETITIONERS [TANCHANCOS] THAT INDICATE BAD FAITH, FORGERY OR FRAUD, OR UNDUE AND IMPROPER PRESSURE AND INFLUENCE x x x ATTENDED THE EXECUTION OF THE WILL, RENDERING THE SUBSTANTIAL COMPLIANCE RULE UNDER ART. 809 OF THE CIVIL CODE INAPPLICABLE.

D.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT DISREGARDED THE PRINCIPLE THAT FINDINGS OF FACTS AND LAW OF THE TRIAL COURT, AS A TRIER OF FACTS, MUST BE GIVEN WEIGHT.

E.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT APPOINTED MRS. SANTOS [NATIVIDAD] AS EXECUTRIX, EVEN THOUGH MRS. SANTOS [NATIVIDAD] IS CLEARLY NOT FIT TO ACT AS EXECUTRIX OF THE ESTATE.[108]

Thus, the main issue in this Petition is whether or not the will should be allowed probate.

The Ruling of the Court

The Petition is unmeritorious.

The Tanchancos argue that the will was a total fabrication given that Consuelo was incapable of executing a will at the alleged date and place of execution. Consuelo resided in Pasay City and not in Makati City, and her old

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[108] Id. at 23-25.

age and prior accident limited her mobility and disabled her in that she needed assistance most of the time. Moreover, Consuelo's bodyguard who was always with her since 1987 averred that she never went to Quasha Law Office. They question Atty. Lallana's assertion that Consuelo was accompanied at the lobby of Quasha Law Office by a maid at the time the will was executed since the said companion was never identified or presented as a witness. They additionally claim that Consuelo's signatures in the will were forged as the signatures therein were suspiciously neat and inconsistent with a "crooked" signature attributable to imperfections and tremors which are usually experienced by an 80-year-old.[109]

The Tanchancos add that the will was simulated because they harbored doubts with the law firm that drafted the will, which is the same counsel of Natividad in the instant case. Moreover, they aver that none of Consuelo's relatives witnessed the execution of the will. They assert that Consuelo's personal legal counsel was Atty. Deogracias (and then Atty. Hizon after Atty. Deogracias' death) and not Atty. Lallana, and that Consuelo never engaged the services of Quasha Law Office during her lifetime. Apart from this, they claim that Consuelo never executed any legal document in *Tagalog* and that she had always used the English language. Also, they maintain that Consuelo secured her residence certificates from Pasay City every calendar year. Yet, in 1987, as can be gleaned from the acknowledgment portion of the will, her residence certificate was issued in Makati City where she was not a resident. They then contend that Natividad did not produce Consuelo's residence certificate for 1987.[110]

The petitioners claim that during her lifetime, Consuelo consistently told her grandchildren that she did not have a will and that if she decides to make one, she will inform Mr. Ciano Neguidula or her lawyer, Atty. Hizon. In light of this, while Consuelo was in a coma in 1997, Natividad, the Tanchancos, Atty. Hizon, and Lumen Santiago met to discuss if Consuelo executed a will and they agreed that she did not. Nonetheless, Natividad suddenly produced the will which was allegedly executed by Consuelo on November 18, 1987. They contend that the will favored Natividad which was not in line with Consuelo's character as she had always treated her daughters fairly and equally.[111]

Significantly, the Tanchancos argue that the will is fatally defective because it did not conform to the formalities required under Article 805 of the Civil Code and the attestation clause failed to state the number of pages upon which the will is written. They add that a statement in the acknowledgment clause about the number of pages cannot be raised to the level of an attestation clause. Thus, the will is null and void. They contend that substantial compliance as contemplated under Article 809 of the Civil Code is not applicable in this case because the attendant circumstances indicated

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[109] Id. at 25-29.
[110] Id. at 28-30.
[111] Id. at 30-31.

bad faith, forgery, or fraud, or undue and improper pressure and influence in the execution of the will.[112]

The Tanchancos enumerated the following circumstances demonstrating the alleged fraud in the execution of the will:

> 5.43.1. It is highly questionable that Decedent, who already has a trusted lawyer, would require the services of another. More suspicious is the fact that the alleged attesting witnesses were all members of the Quasha Law Offices who now represent Mrs. Santos [Natividad] in this case. Such testimonies, although not prohibited by law, are self-serving.
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> 5.43.2. It is also highly questionable, that a *Huling Habilin* prepared by the Quasha Law Office, would have the infirmity of lacking the number of pages in the attestation clause as required by law.
>
> 5.43.3. It is also highly questionable that Decedent, who was frail and advanced in years would travel all the way from her home in Pasay City to Makati to execute her last will and testament given that she has always retained the services of her own attorney, Atty. Hizon in this case, who could have easily prepared the Will and Decedent could have had the Will acknowledged by a notary public in Pasay City.
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> 5.43.4. It is also highly questionable that the Decedent, given that her signatures found in the residence certificates issued in the years just before and after the alleged execution of the will were all crooked, suddenly would have a perfect smooth signature inconsistent with her other recent signatures. Petitioners, who have personal knowledge of the Decedent's signature, immediately recognized the signature appearing in the purported Will as a forgery, which fact was correctly noted by the Trial Court.
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> 5.43.5. It is also highly questionable that Decedent who acquired residence certificates from Pasay City in the years before and after the execution of her final will would acquire a residence certificate in Makati just for the purpose of executing her will. It should be noted that the 1987 Makati residence certificate was conveniently not presented in Court by Mrs. Santos [Natividad]. Furthermore, it should be considered that Decedent was a resident of Pasay and not of Makati at the time of the execution of the will.
>
> 5.43.6. It is also highly unlikely that the Decedent, executing documents in English all her life, would suddenly resort to having her last will executed in Pilipino. Although the use of the national language is highly commended, the language and form of wills are so technical and precise that it would only be logical for parties comfortable and knowledgeable in the use of English language to resort to using it.
>
> 5.43.7. It is also highly unlikely that during the time the Decedent was in a coma, when Mrs. Santos [Natividad], Petitioners, Atty. Hizon and Ms. Lumen Santiago met to discuss whether a Will was executed by the Decedent, Mrs. Santos [Natividad] did not bring up the fact that there indeed was a Will executed by the Decedent, considering Mrs. Santos

[112] Id. at 32-37.

> [Natividad] was present at the execution of the will, only to produce the questioned Will after the death of the Decedent. This is proof of evident bad faith on the part of Mrs. Santos [Natividad], who is bent on receiving more than her just share in the estate of the Decedent.[113]

The Tanchancos insist that the ruling of the trial court should be given weight since it was in the best position to evaluate the evidence and the witnesses presented before it by both parties. They maintain that Natividad is not fit to act as executrix given that she dissipated the properties of the estate; is not physically present most of the time in the Philippines as she stays in San Francisco, California; and is almost 90 years old. Moreover, they aver that the appointment of the administrator of the estate should be resolved through a full-blown hearing.[114]

Natividad counters that the CA's ruling had legal and factual basis and that the will was executed in accordance with the required formalities and solemnities, *viz.*:

> (1) The last will and testament was written in Tagalog, a language known to and understood by decedent. Decedent was born and raised in the province of Bulacan where the dialect is Tagalog. More importantly, there was no evidence presented to show that Decedent could not understand Tagalog at the time of the execution of the will;
>
> (2) The last will and testament was subscribed at the end thereof by Decedent;
>
> (3) The last will and testament was attested and subscribed by three (3) lawyers of Quasha Law Office in the presence of Decedent and of one another;
>
> (4) Each and every page of [the] last will and testament was signed by Decedent and three (3) lawyers on the left margin;
> (5) All pages of the last will and testament of Decedent were numbered correlatively on the upper part of each page;
>
> (6) The last will and testament of Decedent contains an attestation clause;
>
> (7) And finally, the last will and testament of Decedent was acknowledged before a notary public.[115]

Natividad avers that the testimonies of the Tanchancos' witnesses who discounted the possibility of Consuelo travelling to Makati City could not outweigh the positive testimonies of the attesting witnesses to the execution of the will. She points out that Consuelo even travelled abroad before and after the will was executed. Additionally, the lawyer-witnesses have no personal interest in the execution of the will; thus, there is no reason for them

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[113] Id. at 37-39.
[114] Id. at 39-41.
[115] Id. at 567.

to fabricate the same.[116]

Natividad asserts that the Tanchancos failed to prove forgery. She maintains that it is not required that a witness to the will be a relative of the testator; it was not impossible for Consuelo to engage the services of another lawyer in the execution of the will; it was not prohibited for the will to be in *Tagalog*, a dialect known by Consuelo and which she was comfortable with; it is not entirely impossible that Consuelo obtained a residence certificate from Makati City for the purpose of executing her will; it was not proved that Consuelo mentioned during her lifetime that she did not execute any will; the Tanchancos' claim that Consuelo intended to equally divide her properties between her two children was without merit; and, that the provisions of the will favored Natividad did not affect its due execution and even bordered on the question of the intrinsic validity of the will which is not within the purview of the probate court.[117]

Natividad insists that the will conforms to the formalities required under Article 805 of the Civil Code since the trial court and the CA held that the attestation clause substantially complied with the directive of the aforementioned provision. The acknowledgment portion specifically mentioned that the necessary signatures were affixed on every page of the will and referred to the number of pages the will was written. She avers that the execution of the will was not attended by bad faith, forgery or fraud, or undue influence and improper pressure. Furthermore, she asserts that the CA is not precluded from reviewing the factual findings of the trial court especially when there was a misapprehension of facts and the findings were without factual basis and grounded on pure speculations. Lastly, she maintains that her appointment as executrix should be followed as specified in the will.[118]

We now resolve.

Undoubtedly, the RTC and the CA had conflicting findings which would merit the Court's review of the factual and legal circumstances surrounding the case and serve as an exception to the rule that the Court can only rule on questions of law in petitions for review on *certiorari*.[119]

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[116] Id. at 567-569.
[117] Id. at. 570-578.
[118] Id. at 579-586.
[119] *Heirs of Juan Dinglasan v. Ayala Corp.*, G.R. No. 204378, August 5, 2019, citing *Pascual v. Burgos*, 776 Phil. 167, 182-183 (2016).
As to the rule that the Court is generally limited to reviewing only errors of law in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the exceptions are: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

We are inclined to affirm the findings and ruling of the CA as these were based on a careful consideration of the evidence and supported by prevailing law and jurisprudence. The Court concurs with the CA in holding that the trial court erred in lending credence to the allegations of the Tanchancos which are bereft of substantiation that Consuelo's signature was forged or that undue duress was employed in the execution of the will in question.

It is settled that "the law favors testacy over intestacy"[120] and hence, "the probate of the will cannot be dispensed with. Article 838 of the Civil Code provides that no will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court. Thus, unless the will is probated, the right of a person to dispose of his property may be rendered nugatory."[121] In a similar way, "testate proceedings for the settlement of the estate of the decedent take precedence over intestate proceedings for the same purpose."[122]

The will faithfully complied
with the formalities required by law

The main issue which the court must determine in a probate proceeding is the due execution or the extrinsic validity of the will[123] as provided by Section 1, Rule 75[124] of the Rules of Court. The probate court cannot inquire into the intrinsic validity of the will or the disposition of the estate by the testator. Thus, due execution is "whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law"[125] as mandated by Articles 805 and 806 of the Civil Code, as follows:

> Art. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.
>
> The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of

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[120] *Dy Yieng Seangio v. Reyes*, 538 Phil. 40, 51 (2006).
[121] Id., citing *Maninang v. Court of Appeals*, 199 Phil. 640 (1982).
[122] Id. at 51-52, citing *Cuenco v. Court of Appeals*, 153 Phil. 115 (1973).
[123] *Baltazar v. Laxa*, 685 Phil. 484, 497 (2012), citing *Pastor, Jr. v. Court of Appeals*, 207 Phil. 758, 766 (1983).
[124] **SECTION 1.** *Allowance necessary. Conclusive as to execution.* – No will shall pass either real or personal estate unless it is proved and allowed in the proper court. Subject to the right of appeal, such allowance of the will shall be conclusive as to its due execution.
[125] *Baltazar v. Laxa*, *supra* at 498, citing *Pastor, Jr. v. Court of Appeals*, 207 Phil. 758, 766 (1983).

each page.

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.

Art. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.

An examination of Consuelo's will shows that it complied with the formalities required by the law,[126] except that the attestation clause failed to indicate the total number of pages upon which the will was written. To address this concern, Natividad enumerated the following attributes of the attestation clause and the will itself, which the Court affirms:

a. The pages are completely and correlatively numbered using the same typewriting font on all the pages of the will;

b. All indications point to the fact that the will was typewritten using the same typewriter;

c. There are no erasures or alterations in the will;

d. The notarial acknowledgment states unequivocally or with clarity that the will consists of five (5) pages including the attestation clause (i.*e.*[,] the "*pagpapatunay*") and the notarial acknowledgment itself (*i.e.*[,] the "*pagpapatotoong ito*");

e. All of the pages of the entire will were properly signed on the appropriate portions by the testator and the instrumental witnesses;

f. All of the signatures of the testator and the instrumental witnesses on all the pages of the will are genuine if only for the fact that they are identical/similar throughout;

g. The oppositors have not adduced, and in fact waived the presentation of, any kind of evidence to impugn the authenticity of any of the signatures appearing in the will;

[h]. The oppositors have not adduced, and in fact waived the presentation of, any kind of evidence tending to show that the will was allegedly executed by undue influence or any fraudulent or

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[126] *Baltazar v. Laxa*, id. at 497.

improper/unlawful means[.][127]

Notably, the case of *Caneda v. Court of Appeals*[128] explained that:

> x x x [U]nder Article 809, the defects or imperfections must only be with respect to the form of the attestation or the language employed therein. Such defects or imperfections would not render a will invalid should it be proved that the will was really executed and attested in compliance with Article 805. In this regard, however, the manner of proving the due execution and attestation has been held to be limited to merely an examination of the will itself without resorting to evidence *aliunde*, whether oral or written.
>
> The foregoing considerations do not apply where the attestation clause *totally* omits the fact that the attesting witnesses signed each and every page of the will in the presence of the testator and of each other. In such a situation, the defect is not only in the form or the language of the attestation clause but the total absence of a specific element required by Article 805 to be specifically stated in the attestation clause of a will. x x x
>
> Furthermore, the rule on substantial compliance in Article 809 x x x presupposes that the defects in the attestation clause can be cured or supplied by the text of the will or a consideration of matters apparent therefrom which would provide the data not expressed in the attestation clause or from which it may necessarily be gleaned or clearly inferred that the acts not stated in the omitted textual requirements were actually complied with in the execution of the will. In other words, the defects must be remedied by intrinsic evidence supplied by the will itself.
>
> x x x x
>
> The so-called liberal rule, the Court said in *Gil v. Murciano*, 'does not offer any puzzle or difficulty, nor does it open the door to serious consequences. The later decisions do tell us when and where to stop; they draw the dividing line with precision. They do not allow evidence *aliunde* to fill a void in any part of the document or supply missing details that should appear in the will itself. They only permit a probe into the will, an exploration into its confines, to ascertain its meaning or to determine the existence or absence of the requisite formalities of law. This clear, sharp limitation eliminates uncertainty and ought to banish any fear of dire results.'
>
> It may thus be stated that the rule, as it now stands, is that omissions which can be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence, will not be fatal and, correspondingly, would not obstruct the allowance to probate of the will being assailed. However, those omissions which cannot be supplied except by evidence *aliunde* would result in the invalidation of the attestation clause and ultimately, of the will itself.[129](Citations Omitted)

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[127] *Rollo*, pp. 153-154.
[128] 294 Phil. 801 (1993).
[129] Id. at 817-824.

Moreover, *Mitra v. Sablan-Guevarra*[130] instructs, *viz.*:

> As to whether the failure to state the number of pages of the will in the attestation clause renders such will defective, the CA, citing *Uy Coque vs. Naves Sioca* and *In re: Will of Andrada*, perceived such omission as a fatal flaw. In *Uy Coque*, one of the defects in the will that led to its disallowance is the failure to declare the number of its pages in the attestation clause. The Court elucidated that the purpose of requiring the number of pages to be stated in the attestation clause is to make the falsification of a will more difficult. In *In re: Will of Andrada*, the Court deemed the failure to state the number of pages in the attestation clause, fatal. Both pronouncements were, however, made prior to the effectivity of the Civil Code on August 30, 1950.
>
> Subsequently, in *Singson vs. Florentino*, the Court adopted a more liberal approach and allowed probate, even if the number of pages of the will was mentioned in the last part of the body of the will and not in the attestation clause. This is to prevent the will of the testator from being defeated by purely technical considerations.
>
> The substantial compliance rule is embodied in the Civil Code as Article 809 thereof, which provides that:
>
> > **Article 809**. In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805.
>
> Thus, in *Taboada vs. Hon. Rosal*, the Court allowed the probate of a will notwithstanding that the number of pages was stated not in the attestation clause, but in the Acknowledgment. In *Azuela vs. CA*, the Court ruled that there is substantial compliance with the requirement, if it is stated elsewhere in the will how many pages it is comprised of.
>
> What is imperative for the allowance of a will despite the existence of omissions is that such omissions must be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence. "However, those omissions which cannot be supplied except by evidence *aliunde* would result in the invalidation of the attestation clause and ultimately, of the will itself." (Citations omitted).

In the instant case, the attestation clause indisputably omitted to mention the number of pages comprising the will. Nevertheless, the acknowledgment portion of the will supplied the omission by stating that the will has five pages, to wit: "*Ang HULING HABILING ito ay binubuo ng lima (5) na dahon, kasama ang dahong kinaroroonan ng Pagpapatunay at*

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[130] G.R. No. 213994, April 18, 2018, citing *Uy Coque v. Naves Sioca,* 43 Phil. 405, 407 (1922) and In re: Will of Andrada, 42 Phil. 180, 181 (1921).

Pagpapatotoong ito."[131] Undoubtedly, such substantially complied with Article 809 of the Civil Code. Mere reading and observation of the will, without resorting to other extrinsic evidence, yields the conclusion that there are actually five pages even if the said information was not provided in the attestation clause. In any case, the CA declared that there was substantial compliance with the directives of Article 805 of the Civil Code.

When the number of pages was provided in the acknowledgment portion instead of the attestation clause, "[t]he spirit behind the law was served though the letter was not. Although there should be strict compliance with the substantial requirements of the law in order to insure the authenticity of the will, the formal imperfections should be brushed aside when they do not affect its purpose and which, when taken into account, may only defeat the testator's will."[132]

Lawyers are not disqualified from being witnesses to a will; the subscribing witnesses testified to the due execution of the will

Article 820 of the Civil Code provides that, "[a]ny person of sound mind and of the age of eighteen years or more, and not blind, deaf or dumb, and able to read and write, may be a witness to the execution of a will mentioned in Article 805 of this Code." Here, the attesting witnesses to the will in question are all lawyers equipped with the aforementioned qualifications. In addition, they are not disqualified from being witnesses under Article 821[133] of the Civil Code, even if they all worked at the same law firm at the time. As pointed out by Natividad, these lawyers would not risk their professional licenses by knowingly signing a document which they knew was forged or executed under duress; moreover, they did not have anything to gain from the estate when they signed as witnesses. All the same, petitioners did not present controverting proof to discredit them or to show that they were disqualified from being witnesses to Consuelo's will at the time of its execution.

Since the will in this case is contested, Section 11, Rule 76 of the Rules of Court applies, to wit:

> **SEC. 11.** *Subscribing witnesses produced or accounted for where will contested.* – If the will is contested, all the subscribing witnesses, and the notary in the case of wills executed under the Civil Code of the Philippines, if present in the Philippines and not insane, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If all or some of such witnesses are

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[131] *Rollo*, p. 104.

[132] *In the Matter of the Probate of the Last Will and Testament of the Deceased Brigido, Alvarado v. Gaviola, Jr.*, 297 Phil. 384, 392-393 (1993), citing *Rodriguez v. Yap*, 68 Phil. 126, 128 (1939).

[133] Article 821. The following are disqualified from being witnesses to a will:
(1) Any person not domiciled in the Philippines;
(2) Those who have been convicted of falsification of a document, perjury or false testimony.

> present in the Philippines but outside the province where the will has been filed, their deposition must be taken. x x x

The lawyer-witnesses unanimously confirmed that the will was duly executed by Consuelo who was of sound mind and body at the time of signing. The Tanchancos failed to dispute the competency and credibility of these witnesses; thus, the Court is disposed to give credence to their testimonies that Consuelo executed the will in accordance with the formalities of the law and with full mental faculties and willingness to do so.

The burden of proof is upon the Tanchancos to show that Consuelo could not have executed the will or that her signature was forged

It is beyond cavil that Consuelo understood both *Tagalog* and English. In fact, the Tanchancos failed to disprove that Consuelo was more comfortable to use the *Tagalog* dialect in writing the will, given that she was born and raised in Bulacan where the main dialect is *Tagalog*. Notably, although wholly written in *Tagalog*, the will contained the English equivalent for the other terms which relate to wills and succession.

The Tanchancos, despite their allegation that Consuelo should have employed the services of Atty. Hizon, failed to present him in court to validate their claim that he was Consuelo's personal legal counsel and bolster their position that Consuelo could not have engaged the services of Quasha Law Office at all since she purportedly never had any prior dealings with the said firm. The Tanchancos likewise failed to refute that Atty. Lallana was actually a family friend. Atty. Lallana stated in her deposition that Consuelo personally discussed the matters concerning the will with her alone and in private. Atty. Lallana even added that Consuelo knew that the Tanchancos would oppose the will. This may explain why Consuelo chose another counsel to handle the execution of her will so that the heirs would not be able object to it or interfere with her choices.

Likewise, the CA found that Consuelo travelled abroad barely months before and after the will was executed. By inference, such finding demonstrated that she still had the mental and physical capacity to execute a will even if the law firm is in Makati City. The photographs presented during the hearings showed that Consuelo can still stand on her own after the will was executed.

About the claim of forgery, the same remains unsubstantiated because the Tanchancos merely surmised that there were discrepancies in Consuelo's signatures in the Residence Certificates and in the will, and insisted that the said signatures should not be "perfectly written" and instead should be "crooked" due to Consuelo's age.

Based on the Court's assessment, the signatures in Consuelo's

Residence Certificates[134] were similar with her signature in the contested will. As found by the CA, "[a] close scrutiny of the signatures appearing in the 1986, 1988 and 1989 residence certificates of the decedent and comparing them with the signatures of the testatrix in the contested Will failed to disclose a convincing, definitive and conclusive showing of forgery. The appealed decision of the court *a quo* [RTC] likewise failed to discuss how it came to its conclusion that the will contains forged signatures of Consuelo which is one of the reasons it was denied probate. Other than the self-serving allegations of the oppositors-appellees, no evidence was ever presented in court that would indubitably establish forgery of the decedent's signature in the contested will."[135]

Bare allegations without corroborating proof that Consuelo was under duress in executing the will cannot be considered

As similarly found by the CA, the Tanchancos did not adduce evidence to corroborate their allegation that Consuelo declared that she would not execute a last will and testament, other than their self-interested statements.[136] In addition, they failed to portray that Consuelo did not have the testamentary capacity to execute the will or that she was suffering from a condition which could have definitively prevented her from doing so.

The Tanchancos did not explain how Consuelo could have been forced into executing the will, as they merely focused on her alleged physical inability to go to the Quasha Law Office in Makati City. They did not present witnesses who could prove that she was forced into making the will, or that she signed it against her own wishes and volition.

The Tanchancos insisted that Consuelo intended to divide her properties equally between her two daughters, Natividad and Remedios. Yet, based on the testimony of Natividad and the deposition of Atty. Lallana, Consuelo, during her lifetime, already apportioned the prime properties to her two daughters and retained some properties for her own use and support. Hence, what properties she had left, Consuelo could dispose of in any way she desired, as long as the rules on legitime and preterition are observed.

In any case, as earlier stated, inquiring into the intrinsic validity of the will or the manner in which the properties were apportioned is not within the purview of the probate court. "The court's area of inquiry is limited to an examination of, and resolution on, the *extrinsic* validity of the will. The due execution thereof, the testatrix's testamentary capacity, and the compliance with the requisites or solemnities by law prescribed, are the questions *solely* to be presented, and to be acted upon, by the court. Said court – at this stage of the proceedings – is not called upon to rule on the *intrinsic* validity or

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[134] *Rollo*, pp. 314-316.
[135] Id. at 70-71.
[136] *Baltazar v. Laxa*, *supra* note 123 at 501.

efficacy of the provisions of the will, the legality of any devise or legacy therein."[137]

The will should be allowed probate

Considering the foregoing, the will of Consuelo should be allowed probate as it complied with the formalities required by the law. The Tanchancos failed to prove that the same was executed through force or under duress, or that the signature of the testator was procured through fraud as provided under Article 839[138] of the Civil Code and Rule 76, Section 9[139] of the Rules of Court.

We agree with the CA that the court should respect the prerogative of the testator to name an executrix (in this case, Natividad) in her will absent any circumstance which would render the executrix as incompetent, or if she fails to give the bond requirement or refuses to execute the provisions of the will.[140]

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The assailed June 25, 2012 Decision and December 4, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 89593 are **AFFIRMED.**

SO ORDERED.

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[137] *Nuguid v. Nuguid*, 123 Phil. 1305, 1308 (1966), citing *Castañeda v. Alemany*, 3 Phil. 426, 428 (1904); *Pimentel v. Palanca.*, 5 Phil. 436, 440-441 (1905); *Limjuco v. Ganara*, 11 Phil. 393, 394-395 (1908); *Montañano v. Suesa*, 14 Phil. 676, 679 (1909); *Riera v. Palmaroli,* 40 Phil. 105, 116 (1919); *In re: Estate of Johnson*, 39 Phil. 156, 174 (1918); *Palacios v. Palacios*, 106 Phil. 739 (1959); *Teotico v. del Val,* 121 Phil. 392-402 (1965).

[138] Article 839. The will shall be disallowed in any of the following cases:
(1) If the formalities required by law have not been complied with;
(2) If the testator was insane, or otherwise mentally incapable of making a will, at the time of its execution;
(3) If it was executed through force or under duress, or the influence of fear, or threats;
(4) If it was procured by undue and improper pressure and influence, on the part of the beneficiary or of some other person;
(5) If the signature of the testator was procured by fraud;
(6) If the testator acted by mistake or did not intend that the instrument he signed should be his will at the time of affixing his signature thereto.

[139] **SEC. 9.** *Grounds for disallowing will.* – The will shall be disallowed in any of the following cases:
(a) If not executed and attested as required by law;
(b) If the testator was insane, or otherwise mentally incapable to make a will, at the time of its execution;
(c) If it was executed under duress, or the influence of fear, or threats;
(d) If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit;
(e) If the signature of the testator was procured by fraud or trick, and he did not intend that the instrument should be his will at the time of fixing his signature thereto.

[140] *See* RULES OF COURT, Rule 75, § 3; Rule 76, § 1; Rule 78, § 1; and Rule 81, § 1.

RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

WE CONCUR:

ALEXANDER G. GESMUNDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice