

## THIRD DIVISION

[ G.R. No. 191247, July 10, 2013 ]

**FRANCISCO L. ROSARIO, JR., PETITIONER, VS. LELLANI DE GUZMAN, ARLEEN DE GUZMAN, PHILIP RYAN DE GUZMAN, AND ROSELLA DE GUZMAN BAUTISTA, RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to set aside the November 23, 2009<sup>[1]</sup> and the February 11, 2010<sup>[2]</sup> Orders of the Regional Trial Court, Branch 7, Manila (RTC), in Civil Case No. 89-50138, entitled "*Loreta A. Chong v. Sps. Pedro and Rosita de Guzman*," denying the Motion to Determine Attorney's Fees filed by the petitioner.

#### The Facts

Sometime in August 1990, Spouses Pedro and Rosita de Guzman (*Spouses de Guzman*) engaged the legal services of Atty. Francisco L. Rosario, Jr. (*petitioner*) as defense counsel in the complaint filed against them by one Loreta A. Chong (*Chong*) for annulment of contract and recovery of possession with damages involving a parcel of land in Parañaque City, covered by Transfer Certificate of Title (TCT) No. 1292, with an area of 266 square meters, more or less. Petitioner's legal services commenced from the RTC and ended up in this Court.<sup>[3]</sup> Spouses de Guzman, represented by petitioner, won their case at all levels. While the case was pending before this Court, Spouses de Guzman died in a vehicular accident. Thereafter, they were substituted by their children, namely: Rosella de Guzman-Bautista, Lellani de Guzman, Arleen de Guzman, and Philip Ryan de Guzman (*respondents*).<sup>[4]</sup>

On September 8, 2009, petitioner filed the Motion to Determine Attorney's Fees<sup>[5]</sup> before the RTC. He alleged, among others, that he had a verbal agreement with the deceased Spouses de Guzman that he would get 25% of the market value of the subject land if the complaint filed against them by Chong would be dismissed. Despite the fact that he had successfully represented them, respondents refused his written demand for payment of the contracted attorney's fees. Petitioner insisted that he was entitled to an amount equivalent to 25% percent of the value of the subject land on the basis of *quantum meruit*.

On November 23, 2009, the RTC rendered the assailed order denying petitioner's motion on the ground that it was filed out of time. The RTC stated that the said motion was filed after the judgment rendered in the subject case, as affirmed by this Court, had long become final and executory on October 31, 2007. The RTC wrote that considering that the motion was filed too late, it had already lost jurisdiction over the case because a final decision could not be amended or corrected except for clerical errors or mistakes. There would be a variance of the

judgment rendered if his claim for attorney's fees would still be included.

Petitioner filed a motion for reconsideration, but it was denied by the RTC for lack of merit. Hence, this petition.

### **The Issues**

This petition is anchored on the following grounds:

#### I

THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN DENYING THE MOTION TO DETERMINE ATTORNEY'S FEES ON THE GROUND THAT IT LOST JURISDICTION OVER THE CASE SINCE THE JUDGMENT IN THE CASE HAS BECOME FINAL AND EXECUTORY;

#### II

THE TRIAL COURT SERIOUSLY ERRED IN DECLARING THAT PETITIONER'S CLAIM FOR ATTORNEY'S FEES WOULD RESULT IN A VARIANCE OF THE JUDGMENT THAT HAS LONG BECOME FINAL AND EXECUTORY;

#### III

THE TRIAL COURT ERRED IN NOT DECLARING THAT THE FINALITY OF THE DECISION DID NOT BAR PETITIONER FROM FILING THE MOTION TO RECOVER HIS ATTORNEY'S FEES.<sup>[6]</sup>

Petitioner claims that Spouses de Guzman engaged his legal services and orally agreed to pay him 25% of the market value of the subject land. He argues that a motion to recover attorney's fees can be filed and entertained by the court before and after the judgment becomes final. Moreover, his oral contract with the deceased spouses can be considered a quasi-contract upon which an action can be commenced within six (6) years, pursuant to Article 1145 of the Civil Code. Because his motion was filed on September 8, 2009, he insists that it was not yet barred by prescription.<sup>[7]</sup>

For their part, respondents counter that the motion was belatedly filed and, as such, it could no longer be granted. In addition, the RTC had already resolved the issue when it awarded the amount of ₱10,000.00 as attorney's fees. Respondents further assert that the law, specifically Article 2208 of the Civil Code, allows the recovery of attorney's fees under a written agreement. The alleged understanding between their deceased parents and petitioner, however, was never put in writing. They also aver that they did not have any knowledge or information about the existence of an oral contract, contrary to petitioner's claims. At any rate, the respondents believe that the amount of 25% of the market value of the lot is excessive and unconscionable.

<sup>[8]</sup>

### **The Court's Ruling**

Preliminarily, the Court notes that the petitioner filed this petition for review on *certiorari* under Rule 45 of the Rules of Court because of the denial of his motion to determine attorney's fees by the RTC. Apparently, the petitioner pursued the wrong remedy. Instead of a petition for review under Rule 45, he should have filed a petition for *certiorari* under Rule 65 because this case involves an error of jurisdiction or grave abuse of discretion on the part of the trial court.

Moreover, petitioner violated the doctrine of hierarchy of courts which prohibits direct resort to this Court unless the appropriate remedy cannot be obtained in the lower tribunals.<sup>[9]</sup> In this case, petitioner should have first elevated the case to the Court of Appeals (CA) which has concurrent jurisdiction, together with this Court, over special civil actions for *certiorari*.<sup>[10]</sup> Even so, this principle is not absolute and admits of certain exceptions, such as in this case, when it is demanded by the broader interest of justice.<sup>[11]</sup>

Indeed, on several occasions, this Court has allowed a petition to prosper despite the utilization of an improper remedy with the reasoning that the inflexibility or rigidity of the application of the rules of procedure must give way to serve the higher ends of justice. The strict application of procedural technicalities should not hinder the speedy disposition of the case on the merits.<sup>[12]</sup> Thus, this Court deems it expedient to consider this petition as having been filed under Rule 65.

With respect to the merits of the case, the Court finds in favor of petitioner.

In order to resolve the issues in this case, it is necessary to discuss the two concepts of attorney's fees – ordinary and extraordinary. In its ordinary sense, it is the reasonable compensation paid to a lawyer by his client for legal services rendered. In its extraordinary concept, it is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages.<sup>[13]</sup> Although both concepts are similar in some respects, they differ from each other, as further explained below:

The attorney's fee which a court may, in proper cases, award to a winning litigant is, strictly speaking, an item of damages. It **differs** from that which a client pays his counsel for the latter's professional services. However, the two concepts have many things in common that a treatment of the subject is necessary. **The award that the court may grant to a successful party by way of attorney's fee is an indemnity for damages sustained by him in prosecuting or defending, through counsel, his cause in court.** It may be decreed in favor of the party, not his lawyer, in any of the instances authorized by law. On the other hand, **the attorney's fee which a client pays his counsel refers to the compensation for the latter's services.** The losing party against whom damages by way of attorney's fees may be assessed is not bound by, nor is his liability dependent upon, the fee arrangement of the prevailing party with his lawyer. The amount stipulated in such fee arrangement may, however, be taken into account by the court in fixing the amount of counsel fees as an element of damages.

**The fee as an item of damages belongs to the party litigant and not to his lawyer.** It forms part of his judgment recoveries against the losing party. The client and his lawyer may, however, agree that whatever attorney's fee as an element of damages the court may award shall pertain to the lawyer as his compensation or as part thereof. In such a case, the court upon proper motion may require the losing party to pay such fee directly to the lawyer of the prevailing party.

The two concepts of attorney's fees are similar in other respects. They both require, as a prerequisite to their grant, the intervention of or the rendition of professional services by a lawyer. As a client may not be held liable for counsel fees in favor of his lawyer who never rendered services, so too may a party be not held liable for attorney's fees as damages in favor of the winning party who enforced his rights without the assistance of counsel. Moreover, both fees are subject to judicial control and modification. And the rules governing the determination of their reasonable amount are applicable in one as in the other.<sup>[14]</sup> [Emphases and underscoring supplied]

In the case at bench, the attorney's fees being claimed by the petitioner refers to the compensation for professional services rendered, and not as indemnity for damages. He is demanding payment from respondents for having successfully handled the civil case filed by Chong against Spouses de Guzman. The award of attorney's fees by the RTC in the amount of P10,000.00 in favor of Spouses de Guzman, which was subsequently affirmed by the CA and this Court, is of no moment. The said award, made in its extraordinary concept as indemnity for damages, forms part of the judgment recoverable against the losing party and is to be paid directly to Spouses de Guzman (substituted by respondents) and not to petitioner. Thus, to grant petitioner's motion to determine attorney's fees would not result in a double award of attorney's fees. And, contrary to the RTC ruling, there would be no amendment of a final and executory decision or variance in judgment.

The Court now addresses two (2) important questions: (1) How can attorney's fees for professional services be recovered? (2) When can an action for attorney's fees for professional services be filed? The case of *Traders Royal Bank Employees Union-Independent v. NLRC*<sup>[15]</sup> is instructive:

As an adjunctive episode of the action for the recovery of bonus differentials in NLRC-NCR Certified Case No. 0466, private respondent's present claim for attorney's fees may be filed before the NLRC even though or, better stated, especially after its earlier decision had been reviewed and partially affirmed. **It is well settled that a claim for attorney's fees may be asserted either in the very action in which the services of a lawyer had been rendered or in a separate action.**

With respect to the first situation, the remedy for recovering attorney's fees as an incident of the main action may be availed of only when something is due to the client. **Attorney's fees cannot be determined**

**until after the main litigation has been decided and the subject of the recovery is at the disposition of the court.** The issue over attorney's fees only arises when something has been recovered from which the fee is to be paid.

**While a claim for attorney's fees may be filed before the judgment is rendered, the determination as to the propriety of the fees or as to the amount thereof will have to be held in abeyance until the main case from which the lawyer's claim for attorney's fees may arise has become final. Otherwise, the determination to be made by the courts will be premature. Of course, a petition for attorney's fees may be filed before the judgment in favor of the client is satisfied or the proceeds thereof delivered to the client.**

It is apparent from the foregoing discussion that a lawyer has two options as to when to file his claim for professional fees. **Hence, private respondent was well within his rights when he made his claim and waited for the finality of the judgment for holiday pay differential, instead of filing it ahead of the award's complete resolution. To declare that a lawyer may file a claim for fees in the same action only before the judgment is reviewed by a higher tribunal would deprive him of his aforesaid options and render ineffective the foregoing pronouncements of this Court.** [Emphases and underscoring supplied]

In this case, petitioner opted to file his claim as an incident in the main action, which is permitted by the rules. As to the timeliness of the filing, this Court holds that the questioned motion to determine attorney's fees was seasonably filed.

The records show that the August 8, 1994 RTC decision became final and executory on October 31, 2007. There is no dispute that petitioner filed his Motion to Determine Attorney's Fees on September 8, 2009, which was only about one (1) year and eleven (11) months from the finality of the RTC decision. Because petitioner claims to have had an oral contract of attorney's fees with the deceased spouses, Article 1145 of the Civil Code<sup>[16]</sup> allows him a period of six (6) years within which to file an action to recover professional fees for services rendered. Respondents never asserted or provided any evidence that Spouses de Guzman refused petitioner's legal representation. For this reason, petitioner's cause of action began to run only from the time the respondents refused to pay him his attorney's fees, as similarly held in the case of *Anido v. Negado*:<sup>[17]</sup>

In the case at bar, private respondent's allegation in the complaint that petitioners refused to sign the contract for legal services in October 1978, and his filing of the complaint only on November 23, 1987 or more than nine years after his cause of action arising from the breach of the oral contract between him and petitioners point to the conclusion that the six-year prescriptive period within which to file an action based on such oral contract under Article 1145 of the Civil Code had already lapsed.