

THIRD DIVISION

[G.R. NO. 127165, May 02, 2006]

**SALONGA HERNANDEZ & ALLADO, PETITIONER, VS. OLIVIA
SENGCO PASCUAL AND THE HONORABLE COURT OF APPEALS,
RESPONDENTS.**

D E C I S I O N

TINGA, J.:

Petitioner, a professional law partnership, brings forth this Petition for Review assailing the Decision^[1] of the Court of Appeals dated 22 December 1995. The appellate court had affirmed two orders promulgated by the Malabon Regional Trial Court (RTC), Branch 72 (Probate Court), in Sp. Proc. No. 136-MN, entitled "In the Matter of Testate Estate of Doña Adela Pascual, Dr. Olivia S. Pascual, Executrix."

The case actually centers on two estate proceedings, that of Doña Adela Pascual (Doña Adela) and the other, her husband Don Andres Pascual's (Don Andres), who predeceased her. Don Andres died intestate, while Doña Adela left behind a last will and testament. The dispute over the intestate estate of Don Andres has spawned at least two cases already settled by this Court.^[2]

On 1 December 1973, an intestate proceeding for the settlement of the estate of Don Andres was commenced by his widow Doña Adela before the then Court of First Instance, now Regional Trial Court of Pasig, Branch 23 (Intestate Court), docketed as Sp. Proc. No. 7554. Apart from his wife, who bore him no children, Don Andres was survived by several nephews and nieces from his full-blood and half-blood brothers.^[3] This proceeding proved to be the source of many controversies, owing to the attempts of siblings Olivia and Hermes Pascual, acknowledged natural children of Don Andres's brother, Eligio, to be recognized as heirs of Don Andres. Olivia and Hermes Pascual procured the initial support of Doña Adela to their claims. However, on 16 October 1985, the other heirs of Don Andres entered into a Compromise Agreement over the objections of Olivia and Hermes Pascual, whereby three-fourths (3/4) of the estate would go to Doña Adela and one-fourth (1/4) to the other heirs of Don Andres, without prejudice to the final determination by the court or another compromise agreement as regards the claims of Olivia and Hermes Pascual.^[4] Subsequently, the Intestate Court denied the claims of Olivia and Hermes Pascual. Said denial was eventually affirmed by this Court in 1992 in *Pascual v. Pascual-Bautista*,^[5] applying Article 992 of the Civil Code.

In the meantime, Doña Adela died on 18 August 1987, leaving behind a last will and testament executed in 1978, designating Olivia Pascual as the executrix, as well as the principal beneficiary of her estate. The will also bequeathed several legacies and devises to several individuals and institutions.

Olivia Pascual then engaged the services of petitioner in connection with the settlement of the estate of Doña Adela. Their agreement as to the professional fees due to petitioner is contained in a letter dated 25 August 1987, signed by Atty. Esteban Salonga in behalf of petitioner and Olivia Pascual. It is stipulated therein, among others, that the final professional fee "shall be 3% of the total gross estate as well as the fruits thereof based on the court approved inventory of the estate. Fruits shall be reckoned from the time of [Olivia Pascual's] appointment as executrix of the estate. The 3% final fee shall be payable upon approval by the court of the agreement for the distribution of the properties to the court designated heirs of the estate."^[6]

On 26 August 1987, private respondent, represented by petitioner, commenced a petition for the probate of the last will and testament of Doña Adela before the Probate Court, docketed as Sp. Proc. No. 136-MN and raffled to Branch 72 presided by Judge Benjamin M. Aquino, Jr. The petition was opposed by a certain Miguel Cornejo, Jr. and his siblings, who in turn presented a purported will executed in 1985 by Doña Adela in their favor. ^[7]

After due trial, on 1 July 1993, the Probate Court rendered a Decision^[8] allowing probate of the 1978 Last Will and Testament of Doña Adela and disallowing the purported 1985 Will. Letters testamentary were issued to Olivia Pascual.^[9] Cornejo attempted to appeal this decision of the Probate Court, but his notice of appeal was denied due course by the Probate Court, said notice "not having been accompanied by any record on appeal as required under the Interim Rules and by Rule 109 of the Rules of Court."^[10]

On 27 July 1993, petitioner filed a Notice of Attorney's Lien equivalent to three percent (3%) of the total gross estate of the late Doña Adela S. Pascual as well as the fruits thereof based on the court approved inventory of the estate, pursuant to the retainer agreement signed by and between petitioner and Olivia S. Pascual, on 25 August 1987. In an Order dated 4 November 1993, the Probate Court ruled that petitioner's "notice of attorney's lien, being fully supported by a retainer's contract not repudiated nor questioned by his client Olivia S. Pascual, is hereby noted as a lien that must be satisfied chargeable to the share of Olivia S. Pascual."^[11] This was followed by another Order, dated 11 November 1993, wherein it was directed "that notice be x x x given, requiring all persons having claims for money against the decedent, Doña Adela S. Vda. de Pascual, arising from contracts, express or implied, whether the same be due, not due, or contingent, for funeral expenses and expenses of the last sickness of the said decedent, and judgment for money against her, to file said claims with the Clerk of Court at Malabon, Metro Manila, within six (6) months from November 4, 1993."^[12]

Accordingly, on 22 November 1993, petitioner filed a Motion to Annotate Attorney's Lien on Properties of the Estate of Doña Adela Vda. de Pascual.^[13]

It was at this stage, on 19 January 1994, that the Intestate Court rendered a Decision in Sp. Proc. No. 7554, finally giving judicial approval to the aforementioned 1985 Compromise Agreement, and partitioning the estate of Don Andres by adjudicating one-fourth (1/4) thereof to the heirs of Don Andres and three-fourths (3/4) thereof to the estate of Doña Adela. The Intestate Court also awarded

attorney's fees to Atty. Jesus I. Santos, equivalent to 15% of the three-fourths (3/4) share of the estate of Doña Adela.^[14] Olivia Pascual filed a petition for annulment of the award of attorney's fees with the Court of Appeals, but the same was denied, first by the appellate court, then finally by this Court in its 1998 decision in *Pascual v. Court of Appeals*.^[15]

On 26 April 1994, petitioner filed a Motion for Writ of Execution for the partial execution of petitioner's attorney's lien estimated at P1,198,097.02. The figure, characterized as "tentative," was arrived at based on a Motion to Submit Project Partition dated 26 October 1993 filed by Olivia Pascual, which alleged the gross appraised value of Doña Adela's estate at P39,936,567.19. This sum was in turn derived from the alleged value of the total estate of Don Andres, three-fourths (3/4) of which had been adjudicated to Doña Adela. At the same time, petitioner noted that the stated values must be considered as only provisional, considering that they were based on a July 1988 appraisal report; thus, the claim for execution was, according to petitioner, without prejudice to an updated appraisal of the properties comprising the gross estate of Doña Adela.^[16]

On 29 April 1994, Olivia Pascual, through Atty. Antonio Ravelo, filed her comment and/or opposition to the motion for the issuance of a writ of execution on attorney's fees. She argued that a lawyer of an administrator or executor should charge the individual client, not the estate, for professional fees. Olivia Pascual also claimed, citing jurisprudence^[17], that the counsel claiming attorney's fees should give sufficient notice to all interested parties to the estate, and that such was not accomplished by petitioner considering that no notices were given to the several legatees designated in Doña Adela's will.^[18] It was further argued that the motion for execution was premature, considering that the proceedings before the Intestate Court had not yet been terminated; that the computation of the figure of P1,198,097.02 was erroneous; and that the enforcement of the writ of execution on the undivided estate of Don Andres would prejudice his other heirs entitled to one-fourth (1/4) thereof.

On 2 June 1994, the Probate Court issued the first assailed order denying the motion for writ of execution in view of the fact that "the bulk of the estate of the late Doña Adela S. Vda. De Pascual is still tied-up with the estate of the late Don Andres Pascual, the proceedings over which and the final disposition thereof with respect to the partition and segregation of what is to form part of the estate of the late Doña Adela S. Vda. De Pascual is pending with another court sitting in Pasig, Metro Manila, and for having been prematurely filed."^[19]

On 14 November 1994, Olivia Pascual, filed with the Probate Court a Motion to Declare General Default and Distribution of Testamentary Dispositions with Cancellation of Administrator's Bond. It was noted therein that no creditor had filed a claim against the estate of Doña Adela despite due notice published pursuant to Section 1, Rule 86 of the Rules of Court. The Probate Court was also informed of the fact that the proceedings before the Intestate Court had already been terminated by reason of the 14 January 1994 Decision rendered by the latter court. It was also stated "that the corresponding estate taxes had been paid as evidenced by the Estate Tax Return filed with the Bureau of Internal Revenue, and of the Certificate of Authority issued by the said agency."^[20] Interestingly, it was also manifested that

two of the properties that formed part of the estates of the spouses, "the Ongpin Property" and "the Valenzuela Property," had in fact already been partitioned between the estate of Doña Adela and the heirs of Don Andres at the ratio of three-fourths (3/4) and one-fourth (1/4), respectively.

In response, petitioner filed a Comment/Manifestation praying that an order be issued:

(1) ordering the annotation of the attorney's lien on the properties comprising the estate of Doña Adela Pascual;

(2) a writ of partial execution be issued for the satisfaction of the attorney's lien of the undersigned counsel [herein petitioner] in relation to the Ongpin and Valenzuela properties for the amount of **P635,368.14**, without prejudice to the issuance of a writ of execution after the re-appraisal of the present market value of the estate and the determination of the amount due to [petitioner] as attorney's fees;

(3) ordering the appointment of a reputable appraisal company to re-appraise the present market value of the estate of Doña Adela Pascual including the fruits thereof for the purpose of determining the value of the attorney's fees of [petitioner]; and

(4) after the re-appraisal of the estate of Doña Adela Pascual a writ of execution be issued for the full satisfaction and settlement of the attorney's lien of [petitioner].^[21]

On 17 March 1995, the Probate Court issued an order which denied petitioner's motion for a re-appraisal of the property and the issuance of a partial writ of execution "for being prematurely filed as there is no exact estate yet to be inventoried and re-appraised, assuming re-appraisal would be proper, because the bulk of the estate subject of this case, as far as this court is concerned, has not yet been turned over to the executrix or to the court itself."^[22]

Through a petition for certiorari and mandamus, petitioner assailed the two orders of the Probate Court denying its motion for the immediate execution, partial or otherwise, of its claim for attorney's fees: the 2 June 1994 Order and the 17 March 1995 Order. Nonetheless, the twin orders of the RTC were affirmed by the Court of Appeals, effectively precluding petitioner's attempt to execute on its attorney's lien. The appellate court noted that the attorney's lien issued by the Probate Court was chargeable only to the share of Olivia Pascual, and not to the estate of Doña Adela, since it was Olivia Pascual who entered into the agreement with petitioner for the payment of attorney's fees in connection with the settlement of the estate of Doña Adela. Citing *Lacson v. Reyes*,^[23] the Court of Appeals asserted that as a rule an administrator or executor may be allowed fees for the necessary expenses he has incurred but he may not recover attorney's fees from the estate.

The Court of Appeals likewise noted that in the retainer agreement between petitioner and Olivia Pascual, it is stipulated that "the 3% final fee shall be payable upon approval by the court of the agreement for the distribution of the properties to the court designated heirs of the estate."^[24] On this score, the Court of Appeals ruled that as the petition before it did not show "that an agreement on the

distribution of properties of the estate of Doña Adela S. Pascual has been submitted and approved by the probate court,"^[25] the filing of the motion for execution and that of the motion for re-appraisal of the market value of the estate were both premature.

Petitioner sought to reconsider the Decision of the Court of Appeals, but in vain.^[26] Hence this petition.

Petitioner argues that as held in *Occeña v. Marquez*,^[27] the counsel seeking to recover attorney's fees for legal services to the executor or administrator is authorized to file a petition in the testate or intestate proceedings asking the court, after notice to all the heirs and interested parties, to direct the payment of his fees as expenses of administration.^[28] *Lacson*, it is alleged, was inappropriately cited, since that case involved an executor who concurrently was a lawyer who subsequently claimed attorney's fees as part of the expenses of administration. Petitioner also claims that the decision of the probate court admitting Doña Adela's will to probate sufficiently satisfies the condition in the Retainer Agreement that the final fee be payable "upon approval by the court of the agreement for the distribution of the properties to the court designated heirs of the estate," the court-approved will comprising the agreement referred to in the contract.

Petitioner also takes exception to the Probate Court's finding that "the bulk of the estate subject of this case, as far as this [c]ourt is concerned, has not been turned over to the executrix or to the [c]ourt itself," on which the appellate court predicated its ruling that the motion for a writ of execution was premature. Petitioner submits that the Probate Court ineluctably has jurisdiction over the estate of Doña Adela, and has necessarily assumed control over the properties belonging to the said estate. Thus, petitioner continues, there is no longer need to await the turnover of the properties involved in the intestate estate of Don Andres which constitute part of the testate estate of Doña Adela since the Probate Court and the Intestate Court have concurrent jurisdiction over these properties as they have not yet been physically divided.

Petitioner refers to the averment made by Olivia Pascual before the Probate Court that the proceedings before the Intestate Court had already been terminated, and that the proceeds of the sale of the Ongpin Property and the Valenzuela Property had in fact been already divided based on the three-fourths (3/4) to one-fourth (1/4) ratio between the estate of Doña Adela and the heirs of Don Andres. Petitioner further points out that the Probate Court had authorized and approved the sale of the Ongpin Property, yet refused to allow the partial execution of its claim for attorney's fees.

Finally, petitioner asserts that the Probate Court erred in refusing to grant the prayer seeking the re-appraisal of the property of Doña Adela's estate. Such re-appraisal, so it claims, is necessary in order to determine the three percent (3%) share in the total gross estate committed to petitioner by reason of the Retainer Agreement.

It appears that the thrust of the assailed Decision of the Court of Appeals is along these lines: that petitioner may directly claim attorney's fees only against Olivia Pascual and not against the estate of Doña Adela; and that petitioner's claim is also