

THIRD DIVISION

[G.R. No. 137680, February 06, 2004]

**CONCEPT PLACEMENT RESOURCES, INC., PETITIONER, VS.
RICHARD V. FUNK, RESPONDENT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

This is a petition for review on certiorari assailing the Decision^[1] dated February 18, 1999 of the Court of Appeals in CA-G.R. SP No. 46703, entitled "*Richard V. Funk vs. Hon. Santiago Ranada, Jr., Presiding Judge of RTC, Makati, Branch 137 and Concept Placement Resources, Inc.*"

The antecedent facts giving rise to the controversy at bar are as follows:

On June 25, 1994, Concept Placement Resources, Inc., petitioner, engaged the legal services of Atty. Richard V. Funk, respondent.

On July 1, 1994, the parties executed a retainer contract wherein they agreed that respondent will be paid regular retainer fee for various legal services, **except litigation**, quasi-judicial and administrative proceedings and similar actions. In these services, there will be separate billings.

Meanwhile, one Isidro A. Felosopo filed with the Philippine Overseas Employment Administration (POEA) a complaint for illegal dismissal against petitioner, docketed as POEA Case No. 94-08-2370. Petitioner referred this labor case to respondent for legal action.

Immediately, respondent, as counsel for petitioner, filed with the POEA its answer with counterclaim for P30,000.00 as damages and P60,000.00 as attorney's fees.

On March 1, 1995, while the labor case was still pending, petitioner terminated its retainer agreement with respondent. Nevertheless, respondent continued handling the case.

On October 30, 1995, the POEA rendered a Decision dismissing Felosopo's complaint with prejudice. The POEA, however, failed to rule on petitioner's counterclaim for damages and attorney's fees. Thereafter, the Decision became final and executory.

On December 8, 1995, respondent advised petitioner of the POEA's favorable Decision and requested payment of his attorney's fees.

In reply, petitioner rejected respondent's request for the following reasons: (1) the retainer agreement was terminated as early as March 1995; (2) there is no separate agreement for the handling of the labor case; and (3) the POEA did not rule on

petitioner's counterclaim for attorney's fees. This prompted respondent to file with the Metropolitan Trial Court (MTC), Branch 67, Makati City a complaint for sum of money (attorney's fees) and damages against petitioner, docketed as Civil Case No. 51552.

During the pre-trial on September 3, 1996, the MTC, upon respondent's motion, declared petitioner as in default. Its motion for reconsideration was denied in an Order dated September 13, 1996. Forthwith, respondent was allowed to present his evidence *ex-parte*.

On October 27, 1996, the MTC rendered a Decision^[2] ordering petitioner to pay respondent P50,000.00 as attorney's fees.

On appeal, the Regional Trial Court (RTC), Branch 137, Makati City, reversed the MTC Decision, holding *inter alia* that since the MTC, in the same Decision, did not resolve petitioner's counterclaim for attorney's fees, which constitutes *res judicata*, respondent is not entitled thereto.

Respondent filed a motion for reconsideration but was denied by the RTC in an Order^[3] dated December 29, 1997.

Thus, respondent filed with the Court of Appeals a petition for review ascribing to the RTC the following errors: (1) in reversing the MTC Decision on the ground of *res judicata*; and (2) in disregarding the compulsory counterclaim as basis for respondent's action for attorney's fees.

In due course, the Court of Appeals promulgated its Decision^[4] dated February 18, 1999 reversing the assailed RTC Decision and affirming the MTC Decision, thereby sustaining the award to respondent of his attorney's fees in the amount of P50,000.00.

Hence, this petition for review on certiorari wherein petitioner raises the following assignments of error:

"I. A QUESTION OF LAW IS BEING RAISED ON WHETHER AN ALLEGATION IN PLEADING DRAFTED BY COUNSEL ON BEHALF OF HIS CLIENT FILED IN A LABOR CASE CAN BE USED AS THE SOLE BASIS OF A COLLECTION SUIT BY COUNSEL IN THE ABSENCE OF ANY WRITTEN CONTRACT; AND,

"II. ON A QUESTION OF LAW ON WHETHER THERE IS A DISTINCTION BETWEEN THE PRINCIPLE OF *RES JUDICATA* PER SE FROM THE PRINCIPLE THAT THE DISMISSAL OF THE MAIN CASE CARRIES WITH IT THE DISMISSAL OF THE COMPULSORY COUNTERCLAIM AND SAID DISMISSAL CONSTITUTES *RES JUDICATA* WITH RESPECT TO THE COMPULSORY COUNTERCLAIM.^[5]

The basic issue to be resolved is whether or not respondent is entitled to attorney's fees for assisting petitioner as counsel in the labor case.

While it is true that the retainer contract between the parties expired during the pendency of the said labor case, it does not follow that petitioner has no more