

VIVENCIO M. RUIZ, EMILIO D. CASTELLANES AND BLAS A. MIRANDA, PETITIONERS, VS. THE COURT OF APPEALS, AND PEDRO V. GARCIA, AS REPRESENTED BY HIS LEGAL REPRESENTATIVE, MA. LUISA G....

G.R. No. 116909. February 25, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court seeking review of the 26 November 1993 Decision[1] and the 02 September 1994 Resolution[2] of the Court of Appeals[3] in CA-G.R. CV No. 34360.

The late Pedro V. Garcia was a businessman with substantial shareholdings in V. C. Ponce Co., Inc. consisting of shares of stock and real properties. Sometime in 1977, an internal conflict developed and besieged the company, engendering suits between respondent Garcia and V.C. Ponce Co., Inc. over the former's funds and assets.

On March 10, 1977, respondent Pedro V. Garcia engaged the legal services of herein petitioners, Attys. Vivencio M. Ruiz and Emilio D. Castellanes, and an Agreement denominated as a Contract of Retainership[4] was executed by them, the pertinent portion of which, reads:

" CONTRACT OF RETAINERSHIP

I, PEDRO V. GARCIA, of legal age, amrried to Remedios T. Garcia and residing at #100 Adelita Chioco St., Phase II, B.F. Homes, Parañaque, Metro Manila, do hereby declare and certify that I have engaged and retained, as I do hereby retain and engage, the services of Atty. V. M. RUIZ and his associate, E.D. CASTELLANES as my counsel to handle, protect and prosecute all cases involving my rights and interests and that of my family in the 370,000 shares of stocks which we own in the V. C. Ponce Co., Inc., especially the case I have filed against Vicente C. Ponce before the Securities and Exchange Commission (SEC Case No. 001451, Series of 1977), all other related and allied cases, both civil and criminal, which may be assigned to and accepted by him or which have been specifically endorsed to him and now pending before the courts and other venues x x x

xxx xxx xxx

and IN CONSIDERATION of the services of the said attorney, I do hereby assign and transfer to him, his heirs, executors and assigns, forever, fifteen (15%) percent of all my/our shares of stock aforesaid, fully paid, evidenced by Certificate of Stock Nos. 003, 010, and 004, issued by the Corporation in our respective names x x x and of all the benefits and dividends due but not declared and paid on said shares from 1963 up to the execution of this retainership, including any/all monies and assets due us and other recoverables, for me and my family, and, in addition, I further agree to pay the said attorney a yearly retainership fee of P24,000.00 per annum in twelve (12) equal monthly payments of P2,000.00 each, payable on or before the 5th of every ensuing month starting April 1977."

Accordingly, the petitioners handled Civil Case Nos. 14297 and 17713 which were consolidated before Branch 13 of the Court of First Instance in Pasig, Rizal. Civil Case No. Pq-6596 was before Branch 29, of the Court of First Instance in Pasay City.

On July 22, 1982, Pablo V. Garcia unilaterally terminated the said Contract of Retainership on the alleged ground that the petitioners, his lawyers, failed to settle amicably his (Garcia) differences with V. C. Ponce Co., Inc. Petitioners were paid attorney's fees up to the month of July, 1982. Thereafter, the petitioners Ruiz and Castellanes manifested their withdrawal as counsel for Pedro V. Garcia and moved that their attorney's lien be put on record,[5] in the cases involved. Such motion was granted by the trial court.

On February 9, 1984, petitioners Ruiz and Castellanes brought their action "For Collection of Sum of Money and for Specific Performance", docketed as Civil Case No. 6465 before Branch 140, of the Regional Trial Court in Makati City.

On September 27, 1990, while the said case was pending before the said lower court of origin, Pedro V. Garcia died. And so, on October 4, 1990, after notifying the trial court of the demise of their client, counsel moved for the dismissal of the case, invoking Section 21, Rule 3 of the Rules of Court.[6]

On February 8, 1991, the lower court issued an Order dismissing petitioners' complaint, stating that:

" x x x the Court is of the opinion and so holds that the present action is one for recovery of money or interest in whatever recovery the deceased defendant may obtain in cases for which the plaintiff's services were contracted; and that plaintiff's client, the herein defendant, died before final judgment in this case, hence, Section 21 of Rule 3 of the Rules of Court applies ."

On appeal, the Court of Appeals handed down its challenged Decision, disposing, thus:

"WHEREFORE, the Order appealed from is hereby MODIFIED to read, as follows:

'In view of the foregoing, the motion to dismiss and the supplemental motion are hereby granted. Civil Case No. 6364 is hereby DISMISSED in accordance with Section 21, Rule 3 of the Rules of Court, and the notice of lis pendens annotated in T.C.T. No. 64567 is hereby ordered cancelled.'

No pronouncement as to cost."

With the denial of their motion for reconsideration, petitioners found their way to this Court via the present Petition; theorizing, that:

I.

RESPONDENT COURT ERRED IN FINDING THAT THE INSTANT CASE FOR RECOVERY OF ATTORNEY'S PROFESSIONAL FEES WHICH HAD NOT BEEN ADJUDICATED BY FINAL PRONOUNCEMENT IS ABATED BY THE DEATH OF THE DEFENDANT-CLIENT AND SHOULD THEREFORE BE DISMISSED IN ACCORDANCE WITH SECTION 21, RULE 3 OF THE RULES OF COURT.

II.

RESPONDENT COURT ERRED IN NOT TAKING JUDICIAL NOTICE OF THE DECISION OF THE THEN INTERMEDIATE APPELLATE COURT IN AC-GR NO. SP-05291 FINDING THE INSTANT CASE ONE FOR RECOVERY OF LAND OR AN INTEREST THEREIN;

III.

RESPONDENT COURT ERRED IN FINDING THAT THE INSTANT CASE IS ONE "TO COMPEL THE CLIENT-DEFENDANT TO RECOGNIZE FOREMOST THE EXISTENCE OF THE ATTORNEY-CLIENT

RELATIONSHIP AFTER IT WAS SEVERRED AND AS A CONSEQUENCE, INCIDENTALLY CLAIM PAYMENT OF THEIR PROFESSIONAL FEES."

The pivot of inquiry here is: Whether or not the case at bar has survived the death of the private respondent, Pedro V. Garcia.

It is petitioners' theory that the action they brought below was, among others, for the enforcement of their charging lien in Civil Case Nos. 14297 and 17713, and Civil Case No. Pq-6596; which involved a claim over the real properties litigated upon, and therefore, an action which survived the death of their client, Pedro V. Garcia.

Section 21, Rule 3 of the Rules of Court[7] provides:

"Where claims does not survive - When the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules. "

To begin with, the aforequoted provision of law was modified by the enactment of the 1997 Civil Procedure, Section 20, Rule 3 of which, reads:

" When the action is for recovery of money arising from contract, express or implied, and the defendant dies before final entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person. "

It is a fundamental rule in legal hermeneutics that "statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of the passage,"[8] Considering that the case under scrutiny was passed upon by the lower courts under the old rule, it follows that the old rule governs.

Under the plain language of Section 21, Rule 3 of B.P. 129, it is beyond cavil that "if the defendant dies before the Court of First Instance or the Regional Trial Court has rendered a judgment, the action is dismissed and the plaintiff is required to file a money claim against the estate of the deceased. But if the defendant dies after the said court has rendered a judgment and pending appeal, the action is not dismissed and the deceased defendant is substituted by his executor or administrator or legal heirs."[9]

To determine whether the action survives or not, the Court ruling in *Bonilla vs. Barcena* (71 SCRA 491) comes to the fore, thus:

"The question as to whether an action survives or not depends on the nature of the action and the damage sued for (*Iron Gate Bank vs. Brady*, 184 U.S. 665, 22 SCT, 46 L.ed 739). In the cause of action which survive, the wrong complained affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental xxx.."

The core of petitioners' argument is that action should not be dismissed since their complaint involves not just monetary claim but also real properties, as well..

Petitioners' contention is untenable. While they maintain that what they are claiming include real properties, their Complaint is captioned as "For Collection of Money and for Specific Performance." Obviously, the petitioners themselves, who are lawyers, believed that their cause of action against the private respondent is in the nature of *actio in personam*.

"*Actio in personam* is a personal action seeking redress against a particular person. Personal actions are such

whereby a man claims a debt, or personal duty, or damages in lieu thereof." [10] In the present case, petitioners seek to recover attorney's fees from private respondent for professional services they rendered to the latter. Attorney's fee is basically a compensation. [11] In its ordinary sense, "the term (compensation) applies not only to salaries, but to compensation by fees for specific service." [12]

Viewed in proper perspective, an action to recover attorney's fees is basically a monetary claim, which under Section 21, Rule 3 of B.P. 129 is an action that does not survive. Such is the fate of Civil Case No. 6465.

Petitioners theorize that the inclusion of real properties as part of the attorney's fees private respondent owe them, converted the action into one that survives or at the very least, split the action into one that did not survive, with respect to the monetary obligation, and which survived, with respect to the real properties of the deceased.

In *Harden vs. Harden*, 20 SCRA 706, the Court ruled that an action for the satisfaction of attorney's fees is founded on a personal obligation which does not survive the death of the defendant before adjudication. [13]

As enunciated in *Bonila*, the litmus test in determining what action survives and what does not depends on the nature of the action and not on the object or kind of property sought to be recovered.

All things studiously considered, we are of the opinion, and, so hold, that the respondent Court of Appeals erred not in affirming the decision of the court a quo.

WHEREFORE, the Petition is hereby DENIED; and the decision of the Court of Appeals in CA-G.R. CV No. 34360 AFFIRMED in toto. No pronouncement as to costs.

SO ORDERED.

Romero (Chairman), Panganiban, and Gonzaga-Reyes, JJ., concur.
Vitug, J., on official business abroad.

[1] Annex "B," Petition; Rollo, pp. 36-42.

[2] Annex "A," Petition; Rollo, p. 34.

[3] Seventeenth Division. Composed of Justices Alfredo L. Benipayo (Chairman), Ricardo P. Galvez (ponente) and Eubulo G. Verzola (member).

[4] Annex "A," C. A. Records, pp. 51-52.

[5] Annex "E," CA Record, p. 24.

[6] Rollo, p. 19; 1964 Rules of Court.

[7] 1964 Rules of Court.

[8] *Atlas vs. Court of Appeals*, 201 SCRA 51.

[9] *Paredes vs. Moya*, 61 SCRA 526.

[10] R.S. Vasan (Ed.), *Latin Words and Phrases for Lawyers*.

[11] 7 Am Jur 2d, "Attorneys At Law," § 327, p. 340, citing *Central R. & Banking Co. vs. Petters*, 113 US 116.

[12] *Kuenzle & Streiff Inc. vs. Commissioner of Internal Revenue*, 120 Phil. 1099.

[13] *Climaco vs. Siy Uy*, 19 SCRA 858

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