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

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

Ponente: TINGA, J.

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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,

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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 premature since contrary to the requisite stipulated in the Retainer Agreement, there is no court-approved agreement for the distribution of the properties of the estate of Doña Adela as yet.

As an initial premise, we consider whether a lawyer who renders legal services to the executor or administrator of an estate can claim attorney's fees against the estate instead of the executor or administrator. Petitioner correctly cites Occeña v. Marquez[29] as providing the governing rule on that matter as previously settled in the 1905 case of Escueta v. Sy-Juilliong,[30] to wit:

> The rule is that when a lawyer has rendered legal services to the executor or administrator to assist him in the execution of his trust, his attorney's fees may be allowed as expenses of administration. The estate is, however, not directly liable for his fees, the liability for payment resting primarily on the executor or administrator. If the administrator had paid the fees, he would be entitled to reimbursement from the estate. The procedure to be followed by counsel in order to collect his fees is to request the administrator to make payment, and should the latter fail to pay, either to (a) file an action against him in his personal capacity, and not as administrator, or (b) 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. Whichever course is adopted, the heirs and other persons interested in the estate will have the right to inquire into the value of the services of the lawyer and on the necessity of his employment.[31]

We reiterate that as a general rule, it is the executor or administrator who is primarily liable for attorney's fees due to the lawyer who rendered legal services for the executor or administrator in relation to the settlement of the estate. The executor or administrator may seek reimbursement from the estate for the sums paid in attorney's fees if it can be shown that the services of the lawyer redounded to the benefit of the estate.[32] However, if the executor or administrator refuses to pay the attorney's fees, the lawyer has two modes of recourse. First, the lawyer may file an action against the executor or administrator, but in his/her personal capacity and not as administrator or executor. Second, the lawyer may file a petition in the testate or intestate proceedings, asking the court to direct the payment of attorney's fees as an expense of administration. If the second mode is resorted to, it is essential that notice to all the heirs and interested parties be made so as to enable these persons to inquire into the value of the services of the lawyer and on the necessity of his employment.

Lacson v. Reyes,[33] cited by the appellate court, involved an executor who also happened to be the lawyer for the heirs who had filed the petition for probate. For that reason, that case is not squarely in point to the case at bar. It was pronounced therein that the administrator or executor of the estate cannot charge professional fees for legal services against the same estate, as explicitly provided under Section 7, Rule 85 of the Rules of Court of 1985.[34] No such rule exists barring direct recovery of professional legal fees from the estate by the lawyer who is not the executor or administrator of the said estate. The limitations on such direct recovery are nonetheless established by jurisprudence, as evinced by the rulings in Escueta and Occeña.

The character of such claim for attorney's fees bears reiteration. As stated in Escueta, it partakes the nature of an administration expense. Administration expenses include attorney's fees incurred in connection with the administration of the estate.[35] It is an expense attending the accomplishment of the purpose of administration growing out of the contract or obligation entered into by the personal representative of the estate, and thus the claim for reimbursement must be superior to the rights of the beneficiaries.[36]

Notwithstanding, there may be instances wherein the estate should not be charged with attorney's fees. If the costs of counsel's fees arise out of litigation among the beneficiaries thereof themselves or in the protection of the interests of particular persons, the estate generally cannot be held liable for such costs, although when the administrator employs competent counsel on questions which affect his/her duties as the administrator and on which he/she is in reasonable doubt, reasonable expenses for such services may be charged against the estate subject to the approval of the court.[37] It has also been held that an administrator who brings on litigation for the deliberate purpose of defrauding the legitimate heirs and for his own benefit is not entitled to reimbursement for counsel's fees incurred in such litigation.[38]

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Clearly then, while the direct recovery of attorney's fees from the estate may be authorized if the executor refuses to pay such fees, and claimed through the filing of the proper petition with the probate court, such claim remains controvertible. This is precisely why Escueta and its progenies require that the petition be made with notice to all the heirs and interested parties.

It is these perspectives that we apply to the case at bar. Notably, petitioner had filed both a Notice of Attorney's Lien and a Motion for Writ of Execution. These two pleadings have distinct character and must be treated as such.

After Doña Adela's will had been admitted to probate, petitioner had initially filed a Notice of Attorney's Lien wherein it identified itself as "the attorney for the executrix named in the said will, Dra. Olivia S. Pascual", and sought to file its "claim and/or lien for attorney's fees equivalent to Three Percent (3%) of the total gross estate," pursuant to the 1987 Retainer Agreement. Copies of this Notice of Attorney's Lien were furnished Attys. Fortunato Viray, Jr. and Crisanto Cornejo, who appear on record to have served as counsels for the various oppositors to the probate of the 1978 will of Doña Adela. This Notice of Attorney's Lien was noted by the Probate Court in its Order of 4 November 1993, "as a lien that must be satisfied chargeable to the share of Olivia S. Pascual."

It may be so that petitioner, in filing this Notice of Attorney's Lien, initially intended to hold Olivia Pascual, and not Doña Adela's estate, liable for the attorney's fees. It did identify itself as the lawyer of Olivia Pascual, and the Probate Court did note that the lien be satisfied chargeable to the share of the executor. Yet it must also be noted that such lien, as it is, is only contingent on the final settlement of the estate of Doña Adela, at such time, since the Retainer Agreement on which the lien is hinged provides 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."[39] This is also made clear by the order noting the lien, which qualified that said lien was chargeable only to the share of Olivia Pascual, hence implying that at the very least, it may be claimed only after her share to Doña Adela's estate is already determinate.

In rendering its assailed Decision, the Court of Appeals relied on this qualification made by the Probate Court that the lien for attorney's fees was chargeable only to the share of Olivia Pascual. Yet the Notice of Attorney's Lien only seeks to serve notice of the pendency of the claim for attorney's fees, and not the payment of such fees itself. On its own, the Notice of Attorney's Lien cannot serve as the basis for the Probate Court to authorize the payment to petitioner of attorney's fees.

On the other hand, Escueta and its kindred cases do explicitly recognize the recourse for the lawyer to directly make the claim for attorney's fees against the estate, not the executor or administrator. The filing of the Notice of Attorney's Lien and the qualificatory character of the rulings thereon, do not preclude the resort to the mode of recovery against the estate as authorized by jurisprudence. Clearly then, we disagree with the opinion of the Court of Appeals that attorney's fees can be claimed only against the share of Olivia Pascual.

The instant case is rooted in an incomplete attempt to resort to the second mode of recovery of attorney's fees as authorized in Escueta, originating as it did from the denial of petitioner's Motion for Writ of Execution, and not the Notice of Attorney's Lien. The Motion did expressly seek the payment of attorney's fees to petitioner. Escueta and Occeña, among other cases, did clearly lay down the manner under which such fees may be paid out even prior to the final settlement of the estate as an administration expense directly chargeable to the estate itself. The critical question in the present petition is thus whether this Motion for Writ of Execution satisfies the requisites set in Escueta for a claim for attorney's fees directly chargeable against the estate. It does not.

The fact that the prayer for attorney's fees was cast in a motion and not a petition should not impede such claim, considering that the motion was nonetheless filed with the Probate Court. However, the record bears that the

requisite notice to all heirs and interested parties has not been satisfied. Doña Adela's will designated 19 other individuals apart from Olivia Pascual, and four (4) different institutions as recipients of devises or legacies consisting of real properties, jewelries, and cash amounts. Yet only Olivia Pascual was served with a copy of the Motion for Writ of Execution, the motion which effectively sought the immediate payment of petitioner's attorney's fees. As early as 29 April 1994, Olivia Pascual, in opposing the Motion for Writ of Execution, already pointed out that petitioner had failed to give sufficient notice to all interested parties to the estate, particularly the several devisees and legatees so named in Doña Adela's will.

Such notice is material to the other heirs to Doña Adela's estate. The payment of attorney's fees, especially in the amount of 3% of the total gross estate as sought for by petitioner, substantially diminishes the estate of Doña Adela and may consequently cause the diminution of their devises and legacies. Since these persons were so named in the very will itself and the action for probate which was filed by petitioner itself, there is no reason why petitioner could not have given due notice to these persons on its claim for attorney's fees.

The requisite notice to the heirs, devisees, and legatees is anchored on the constitutional principle that no person shall be deprived of property without due process of law.[40] The fact that these persons were designated in the will as recipients of the testamentary dispositions from the decedent establishes their rights to the succession, which are transmitted to them from the moment of the death of the decedent.[41] The payment of such attorney's fees necessarily diminishes the estate of the decedent, and may effectively diminish the value of the testamentary dispositions made by the decedent. These heirs, devisees, and legatees acquire proprietary rights by reason of the will upon the moment of the death of the decedent, incipient or inchoate as such rights may be. Hence, notice to these interested persons of the claims for attorney's fees is integral, so as to allow them to pose any objections or oppositions to such claim which, after all, could lead to the reduction of their benefits from the estate.

The failure to notify the other heirs, devisees or legatees, to the estate of Doña Adela likewise deprives these interested persons of the right to be heard in a hearing geared towards determining whether petitioner was entitled to the immediate payment of attorney's fees. Notably, petitioner, in filing its Motion for Writ of Execution, had initially set the hearing on the motion on 29 April 1994, but one day prior to the scheduled hearing, gave notice instead that the motion was being submitted for the consideration of the Probate Court without further argument.[42] Evidently, petitioner did not intend a full-blown hearing to ensue on whether it was entitled to the payment of attorney's fees. Yet the claim for attorney's fees is hardly incontrovertible.

That the Retainer Agreement set the attorney's fees at three percent (3%) of the gross estate does not imply that the basis for attorney's fees is beyond controversy. Attorney's fees in this case are in the nature of administration expenses, or necessary expenses in the first place. Any party interested in the estate may very well, in theory, posit a myriad of objections to the attorney's fees sought, such as for example, that these fees were not necessary expenses in the care, management, and settlement of the estate. Whether or not such basis for valid objections exists in this case is not evident, but the fact remains that all the parties interested in the estate, namely the other devisees and legatees, were deprived of the opportunity to raise such objections as they were not served notice of the Motion for Writ of Execution.

The instant claim for attorney's fees is thus precluded by the absence of the requisite notices by petitioner to all the interested persons such as the designated heirs, devisees, legatees, as required by the jurisprudential rule laid down in Escueta. However, the Court of Appeals held that it was the prematurity of the claim for attorney's fees that served as the fatal impediment. On this point, the Court does not agree.

Again, the remaining peripheral questions warrant clarification.

Escueta itself provides for two alternative approaches through which counsel may proceed with his claim for

attorney's fees. The first involves a separate suit against the executor or administrator in the latter's personal capacity. The second approach is a direct claim against the estate itself, with due notice to all interested persons, filed with the probate court.

In the same vein, the existence of the Retainer Agreement between petitioner and Olivia Pascual allows petitioner two possible causes of action on which to claim attorney's fees in connection with the administration of the estate of Doña Adela. The first possible cause of action pivots on the Retainer Agreement, which establishes an obligation on the part of Olivia Pascual to pay the final fee of 3% of the gross total estate of Doña Adela, payable upon approval by the Probate Court of the agreement for the distribution of the properties to the court- designated heirs of the estate. Necessarily, since the recovery of attorney's fees is premised on the Retainer Agreement any award thereupon has to await the final ascertainment of value of the gross total estate of Doña Adela, as well as the approval by the Probate Court of the agreement for the distribution of the properties. The Retainer Agreement makes it clear that the final payment of attorney's fees is contingent on these two conditions,[43] and the claim for attorney's fees based on the Retainer Agreement cannot ripen until these conditions are met.

Moreover, it cannot be escaped that the Retainer Agreement was entered into between petitioner and Olivia Pascual prior to the filing of the probate petition, and that at such time, she had no recognized right to represent the estate of Doña Adela yet. This circumstance further bolsters our opinion that if petitioner insists on the judicial enforcement of the Retainer Agreement, its proper remedy, authorized by law and jurisprudence, would be a personal action against Olivia Pascual, and not against the estate of Doña Adela. If this were the recourse pursued by petitioner, and Olivia Pascual is ultimately held liable under the Retainer Agreement for attorney's fees, she may nonetheless seek reimbursement from the estate of Doña Adela if she were able to establish that the attorney's fees paid to petitioner were necessary administration expenses.

The second or alternative recourse is the direct claim for attorney's fees against the estate, as authorized under Escueta. The character of this claim is not contractual in nature, but rather, as a reimbursement for a necessary expense of administration, and it will be allowed if it satisfies the criteria for necessary expenses of administration. Its entitlement can be established by the actual services rendered by the lawyer necessary to the accomplishment of the purposes of administration, and not necessarily by the contract of engagement of the attorney's services.

By filing their claim directly against the estate of Doña Adela, petitioner has clearly resorted to this second cause of action. There are consequent advantages and disadvantages to petitioner. Since the claim arises irrespective of the contingencies as stipulated in the Retainer Agreement, the attorney's fees may be collected against the estate even before the final determination of its gross total value or the final approval of the project of partition. As earlier stated, such claim for reimbursement is superior to the right of the beneficiaries to the estate, and as such, there is need to finally determine the respective shares of the beneficiaries before attorney's fees in the nature of administration expenses may be paid out.

The one distinct disadvantage, however, is that the Retainer Agreement cannot be deemed binding on the estate or the Probate Court since the estate is not a party to such contract. This would not preclude the Probate Court from enforcing the provisions of the Retainer Agreement if, in its sound discretion, the terms of payment therein are commensurate to the value of the actual services necessary to the administration of the estate actually rendered by petitioner. Yet if the Probate Court does choose to adopt the Retainer Agreement as binding on the estate of Doña Adela, petitioner may again be precluded from immediate recovery of attorney's fees in view of the necessity or precondition of ascertaining the gross total value of the estate, as well as the judicial approval of the final agreement of partition.

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In any event, whether the claim for attorney's fees was pursued through a separate suit against Olivia Pascual (in her personal capacity) for the enforcement of the Retainer Agreement, or against the estate of Doña Adela as reimbursement for necessary administration expenses, it remains essential that a hearing be conducted on the claim. In either case too, the hearing will focus on the value of the services of the petitioner and the necessity of engaging petitioner as counsel.

We reiterate that the direct claim against the estate for attorney's fees must be made with due notice to the heirs, devisees, and legatees. The failure of petitioner to give such notice renders its present claim inefficacious for now. Indeed, there is sufficient cause to dismiss outright petitioner's Motion for Writ of Immediate Execution filed with the Probate Court, for its failure to notify therein the other persons interested in the estate of Doña Adela. Nonetheless, to authorize said outright denial at this stage could unduly delay the settlement of the estate of Doña Adela, considering the likelihood that petitioner would again pursue such claim for attorney's fees as the right to which is affirmed by law and jurisprudence.

Hence, in order not to unduly protract further the settlement of the estate of Doña Adela, the Court deems it proper instead to mandate the Probate Court to treat the Motion for Writ of Immediate Execution as a petition seeking a court order to direct the payment of attorney's fees as expenses of administration, but subject to the condition that petitioner give due notice to the other designated devisees and legatees so designated in the will of the claim prior to the requisite hearing thereon. Petitioner may as well seize such opportunity to formally amend or reconfigure its motion to a petition to direct payment of attorney's fees. Once this step is accomplished, there should be no impediment to petitioner's claim for recovery of attorney's fees as reimbursement for necessary administration expenses, within the terms established by law, jurisprudence, and this decision.

One final note. Petitioner's final prayer before this court is that it be issued a partial writ of execution, consistent with its position before the Probate Court that it is already entitled to at least a partial payment of its attorney's fees. This prayer cannot obviously be granted at this stage by the Court, considering the fatal absence of due notice to the other designated beneficiaries to the estate of Doña Adela. Still, we do not doubt that the Probate Court, within its discretion, is capacitated to render the award of attorney's fees as administration expenses either partially or provisionally, depending on the particular circumstances and its ultimate basis for the determination of the appropriate attorney's fees.

WHEREFORE, the petition is GRANTED IN PART. The Decision of the Court of Appeals dated 22 December 1995 and the Orders of the Regional Trial Court of Malabon, Branch 72, dated 2 June 1994 and 17 March 1995 are hereby SET ASIDE insofar as said orders denied petitioner's Motion for Writ of Immediate Execution dated 26 April 1994. Petitioner is hereby directed to set for hearing its claim for attorneys fees, giving due notice thereof to all the heirs, devisees, and legatees designated in the 1978 Last Will and Testament executed by Doña Adela Pascual. The Regional Trial Court is directed to treat petitioner's aforesaid motion as a PETITION for the payment of attorney's fees as expenses of administration, and after due hearing resolve the same with DISPATCH, conformably with this decision. No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

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[1] Penned by then Associate Justice (now Supreme Court Justice) Alicia Austria-Martinez, concurred in by Associate Justices Jaime M. Lantin and Bernardo LL. Salas.

[2] Namely Pascual v. Pascual-Bautista, G.R. No. 84240, 25 March 1992, 207 SCRA 561, and Pascual v. Court of

Appeals, 360 Phil. 403 (1998).

[3] See Pascual v. Court of Appeals, supra at 408.

[4]Id. at 409.

[5] Supra note 2.

[6] Records, p. 2093.

[7] See Rollo, p. 40.

[8] Id. pp. 40-52.

[9]Id. at 51.

[10]Id. at 56. In an Order dated 4 November 1993, infra note 11.

[11] Id. at 55. The Probate Court characterized the notice of attorney's lien as having been filed by "Atty. [Roberto H.] Hernandez," although in truth, said notice was signed by Atty. Hernandez in behalf of petitioner.

[12] Records, p. 2154. It appears that the Order was subsequently published in the three (3) consecutive editions of the Guardian newspaper in December 1993 and January 1994. Id. at 2162.

[13] Rollo, pp. 57-60.

[14] See Pascual v. Court of Appeals, supra note 2 at 410.

[15] Supra note 2.

[16] Rollo, p. 73.

[17] Particularly, Sato v. Rallos, cited as 12 SCRA 89 (sic) [September 30, 1964], citing Aldemis v. Judge of the CFI of Mindoro, L-2360, December 29, 1949.

[18] See rollo, p. 77.

[19] Id. at 82.

[20] Id. at 84.

[21] Rollo, p. 91.

[22]Id. at 100-A.

[23] Cited as 182 SCRA 729, 730.

[24] Rollo, p. 36.

[25]Id.

[26]The Motion for Reconsideration was denied in a Resolution dated 11 November 1996.

[27] Cited as 60 SCRA 38, 45.

[28]Rollo, p. 18.

[29] 158 Phil. 249 (1974)

[30] 5 Phil. 405 (1905).

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[31] Occeña v. Marquez, supra note 29, at 256-257; citing Escueta v. Sy Juilliong, 5 Phil. 405; Piliin v. Joson, et. al., 41 Phil. 26. See also Ramos v. Bidin, Nos. L-53650 & L-55460, 28 May 1988, 161 SCRA 561, 569. The rule as first pronounced in Escueta was derived from American jurisprudence, considering that the provisions of the then Code of Civil Procedure relating to the settlement of estates of deceased persons were taken from similar provisions in the United States. Escueta v. Sy Juilliong, supra note 30 at 408.

[32] See Gonzales-Orense v. Court of Appeals, No. L-80526, 18 July 1988, 163 SCRA 477, 480; citing Uy Tioco v. Imperial, 53 Phil. 802; Aldamiz v. Judge of the CFI Mindoro, et al., 85 Phil. 228.

[33] G.R. No. 86250, 26 February 1990, 182 SCRA 729.

[34] "When the executor or administrator is an attorney, he shall not charge against the estate any professional fees for legal services rendered by him."

[35]V. FRANCISCO, V-B THE REVISED RULES OF COURT IN THE PHILIPPINES (1970 ed.), p. 146, citing 24 C.J.S. 424.

[36] Ibid.

[37]Id. at 152.

[38] Id. citing Dacanay v. Hernandez , 53 Phil. 824.

[39] CA rollo, p. 33.

[40] See CONSTITUTION, Art. III, Sec. 1.

[41] See CIVIL CODE, Art. 777.

[42] See Record, pp. 2196-2197.

[43] On that score, petitioner submits before us that the probated will serves as the basis for the distribution of the estate, and may be considered as the court-approved agreement for the distribution of the estate, as referred to in the Retainer Agreement. This argument contradicts the well-settled rule that for the probate of a will, the court's area of inquiry is limited to the extrinsic validity thereof, and not the intrinsic validity or efficacy of the provisions of the will or the legality of any devise or legacy. See e.g., Sumilang v. Ramagosa, et al., 129 Phil. 636, 639 (1967); citing Nuguid v. Nuguid, No. L-23445, 23 June 1966. The admission of the will to probate only evinces judicial satisfaction as to the due execution of the will, and not approval of the testamentary dispositions therein. Hence, the order granting probate cannot be considered as of yet as one sanctioning the distribution of the estate in accordance with the testamentary provisions.

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