MARIA L. ANIDO, JOSE E. LARRAGA AND SALUD E. LARRAGA, PETITIONERS, VS. FILOMENO NEGADO AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 143990. October 17, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision dated February 15, 2000 of the Court of Appeals, Fourth Division, in CA-G.R. CV No. 39137[1] and its Resolution dated June 16, 2000 denying the motion for reconsideration filed by petitioners Maria L. Anido, Jose E. Larraga and Salud E. Larraga (petitioners).

This case arose from a complaint for collection of attorney's fees filed by private respondent Filomeno R. Negado (private respondent) in the Regional Trial Court (RTC) of Palo, Leyte against petitioners on November 23, 1987.

Private respondent alleged that in July 1978, pursuant to an oral contract for legal services between petitioners and himself, he prepared several legal documents for the settlement of the intestate estate of petitioners' parents, Federico V. Larraga and Florentina Entereso. On October 8, 1978, private respondent gave to petitioners the documents entitled "Extrajudicial Settlement of Estate Among Heirs" and "Project of Partition." He also prepared a document entitled "Contract for Attorney's Service and Fee" which stipulated, among others, that, as compensation for legal services rendered by him, petitioners were to pay him four percent (4%) of the proceeds, net of taxes, of the sale of the properties inherited by them.[2] Private respondent claimed that petitioners received the documents he prepared but they refused to sign the contract for legal services. He also averred that petitioners later used the said documents in the settlement of their parents' estate, but he was not paid a single centavo therefor. Private respondent prayed for the payment of attorney's fees equivalent to fifteen percent (15%) of the gross sales of all real estate properties subject of the extra-judicial settlement, plus twenty percent (20%) interest on the P50,000.00 attorney's fees including litigation expenses and costs.[3]

In their Answer, petitioners contended that they never retained the services of private respondent since they had earlier retained the services of other lawyers for the settlement of their parents' estate, and that private respondent volunteered to draft the legal documents free of charge since he was a close friend of their deceased parents. Petitioners likewise asserted that private respondent had no cause of action against them, there being no contract for legal services to speak of, and that his claim was barred by laches because the complaint was filed more than ten years after he prepared the said Extrajudicial Settlement of Estate and Project of Partition. They also claimed that private respondent's cause of action had already prescribed since the same was based on an alleged oral contract, which, under Article 1145 of the Civil Code, should have been filed within six years from the time the cause of action accrued.[4]

During the pre-trial of the case, the issues were narrowed down to the following: (1) whether petitioners engaged the services of private respondent for the settlement of their parents' estate; (2) whether the RTC had acquired

jurisdiction over the case despite private respondent's failure to pay the correct amount of docket fees; and (3) whether private respondent's claim of 15% of the gross sales of all real estate properties subject of extra-judicial settlement was reasonable.[5]

After trial on the merits, the RTC promulgated its Decision on August 21, 1990. The dispositive portion thereof states:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff[6] and against the defendants:[7]
>
> (1) Declaring that the defendants engaged the professional services of the plaintiff in the settlement of the intestate estate of the deceased parents of the defendants;
>
> (2) Declaring that plaintiff had already performed his obligation of the verbal contract of professional services before he was illegally dismissed as counsel by the defendants;
>
> (3) Ordering defendants to solidarily pay plaintiff as professional fee the sum of NINE HUNDRED FIFTY-THREE THOUSAND TWO HUNDRED FIFTY (P953,250.00) PESOS representing fifteen (15%) percent of the total sales of P6,355,000.00 of the properties subject of the Extrajudicial Settlement;
>
> (4) Ordering defendants to solidarily pay interest of twenty percent (20%) of P953,250.00 from the filing of the complaint until fully paid;
>
> (5) Ordering defendants to solidarily pay plaintiff attorney's fees of this litigation plus litigation expenses in the sum of THIRTY THOUSAND (P30,000.00) PESOS; and
>
> (6) Costs of this suit.[8]

Petitioners appealed the decision of the RTC to the Court of Appeals. On February 15, 2000, the appellate court rendered its Decision affirming the trial court's ruling that an oral contract for rendition of legal services was entered into by petitioners and private respondent. However, the appellate court modified the RTC's decision by reducing the amount of attorney's fees from fifteen percent (15%) to ten percent (10%) of the total sales of the properties subject of the extra-judicial settlement amounting to P6,355,000.00; and eliminating the award of interest and litigation expenses for insufficiency of evidence.[9] The Court of Appeals also ruled that private respondent's action had already prescribed when he filed the complaint on November 23, 1987 since his cause of action already accrued as early as October 1978 when petitioners refused to sign the contract for legal services, thereby effectively foreclosing private respondent's chances of recovering what he regarded as his contingent claims for attorney's fees.[10] However, the appellate court held that since the issue of prescription was not included among the issues during the pre-trial, it could not be resolved on appeal.[11]

Both parties filed their respective motions for reconsideration of the decision of the Court of Appeals but these were denied for lack of merit.[12]

Petitioners filed the present petition, raising the following arguments:

> (A)
>
> THE HONORABLE COURT OF APEALS ERRED IN NOT DISMISSING THE COMPLAINT ON THE GROUND OF PRESCRIPTION.
>
> (B)
>
> THE HONORABLE COURT OF APPEALS VIOLATED THE RULE ON RES INTER ALIOS ACTA WHEN IT GAVE CREDENCE TO A HEARSAY PIECE OF EVIDENCE.[13]

Anent the issue of prescription, petitioners point out that the appellate court erred in finding that said issue could

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no longer be resolved on appeal since they had raised prescription as a special and affirmative defense in their Answer, and invoked it again during the pre-trial. The trial court however postponed the resolution of said issue until after the conclusion of the pre-trial.[14] Petitioners further claim that assuming arguendo that they failed to raise the issue of prescription in their pleadings, such failure does not amount to a waiver of the right to invoke the same, considering that private respondent's allegations in his complaint clearly showed that his cause of action had already prescribed.[15]

The Court agrees with petitioners that the appellate court could have resolved the issue of prescription when the case was brought to it on appeal. The records clearly show that petitioners pleaded the defense of prescription at the trial court level.[16] Moreover, this Court has held in several cases that failure to plead the defense of prescription will not amount to a waiver thereof where the plaintiff's own allegation in the complaint or the evidence it presented shows that the action had already prescribed.[17]

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[18] had already lapsed.

As a lawyer, private respondent should have known that he only had six years from the time petitioners refused to sign the contract for legal services and to acknowledge that they had engaged his services for the settlement of their parents' estate within which to file his complaint for collection of legal fees for the services which he rendered in their favor.

Furthermore, Rule 9, Section 1 of the 1997 Rules of Civil Procedure states that when it appears from the pleadings or the evidence on record that an action is barred by prescription, the court is mandated to dismiss the same:

> Defenses and objections not pleaded. -- Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the same. (Emphasis supplied.)

Clearly, private respondent's claim for payment of fees for legal services rendered is barred by prescription. Hence, the appellate court erred in affirming the award of professional fees in favor of private respondent.

WHEREFORE, the petition is hereby GIVEN DUE COURSE and GRANTED. The assailed Decision of the Court of Appeals is hereby REVERSED and SET ASIDE.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo and Ynares-Santiago, JJ., concur.

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[1] Filomeno R. Negado, Plaintiff-Appellee vs. Maria L. Anido, Jose E. Larraga and Salud E. Larraga, Defendants-Appellants.

[2] Decision of the Court of Appeals in CA-G.R. CV No. 39137, Rollo, p. 74.

[3] Decision of the Regional Trial Court of Palo, Leyte, Branch 6, in Civil Case No. 7505 (Filomeno R. Negado,

Plaintiff vs. Maria L. Anido, Jose E. Larraga and Salud E. Larraga, Defendants), Id., at 154-155; Decision of the Court of Appeals, Id., at 74.

[4] Answer, Id., at 118-121.

[5] Decision of the Regional Trial Court, Id., at 161.

[6] Private respondent Filomeno R. Negado.

[7] Petitioners Maria L. Anido, Jose E. Larraga and Salud E. Larraga.

[8] Id., at 169-170.

[9] Decision of the Court of Appeals in CA-G.R. CV No. 39137, Id., at 88-89.

[10] Id., at 78.

[11] Id.

[12] Resolution of the Court of Appeals in CA-G.R. CV No. 39137, June 16, 2000, Id., at 109.

[13] Petition, Id., at 57, 62.

[14] Id., at 60.

[15] Id., at 61-62.

[16] As a special and affirmative defense in their Answer, petitioners alleged:

xxx

2. Plaintiff's claim is barred by estoppel and laches. From the time he offered to assist defendants in the settlement of the estate of their deceased parents up to the filing of the present Complaint, almost ten (10) years have elapsed, with plaintiff remaining silent all the time. He cannot now be heard of his baseless claim at this late stage of time.

3. Plaintiff's action is barred by prescription, it being supposedly based on an oral contract of professional services. Under Article 1145 of the Civil Code, an action based on an oral contract prescribes in six (6) years.

xxx (Rollo, p. 121).

[17] Philippine National Bank vs. Pacific Commission House, 27 SCRA 766 (1969); Philippine National Bank vs. Perez, 16 SCRA 270 (1966), Chua Lamko vs. Diokno, 97 Phil. 821.

[18] Article 1145 of the Civil Code states:

The following actions must be commenced within six years:

(1) Upon an oral contract;

(2) Upon a quasi-contract.

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