

QUASHA ANCHETA PEÑA AND NOLASCO LAW OFFICE FOR ITS OWN BEHALF, AND REPRESENTING THE HEIRS OF RAYMOND TRIVIERE, PETITIONERS, VS. LCN CONSTRUCTION CORP., RESPONDENT.

G.R. No. 174873. August 26, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review under Rule 45 of the Revised Rules of Court with petitioners Quasha Ancheta Peña and Nolasco Law Office (Quasha Law Office) and the Heirs of Raymond Triviere praying for the reversal of the Decision[1] dated 11 May 2006 and Resolution[2] dated 22 September 2006 of the Court of Appeals granting in part the Petition for Certiorari filed by respondent LCN Construction Corporation (LCN) in CA-G.R. SP No. 81296.

The factual antecedents of the case are as follows:

Raymond Triviere passed away on 14 December 1987. On 13 January 1988, proceedings for the settlement of his intestate estate were instituted by his widow, Amy Consuelo Triviere, before the Regional Trial Court (RTC) of Makati City, Branch 63 of the National Capital Region (NCR), docketed as Special Proceedings Case No. M-1678. Atty. Enrique P. Syquia (Syquia) and Atty. William H. Quasha (Quasha) of the Quasha Law Office, representing the widow and children of the late Raymond Triviere, respectively, were appointed administrators of the estate of the deceased in April 1988. As administrators, Atty. Syquia and Atty. Quasha incurred expenses for the payment of real estate taxes, security services, and the preservation and administration of the estate, as well as litigation expenses.

In February 1995, Atty. Syquia and Atty. Quasha filed before the RTC a Motion for Payment of their litigation expenses. Citing their failure to submit an accounting of the assets and liabilities of the estate under administration, the RTC denied in May 1995 the Motion for Payment of Atty. Syquia and Atty. Quasha.

In 1996, Atty. Quasha also passed away. Atty. Redentor Zapata (Zapata), also of the Quasha Law Office, took over as the counsel of the Triviere children, and continued to help Atty. Syquia in the settlement of the estate.

On 6 September 2002, Atty. Syquia and Atty. Zapata filed another Motion for Payment,[3] for their own behalf and for their respective clients, presenting the following allegations:

(1)

That the instant Petition was filed on January 13, 1988; and Atty. Enrique P. Syquia was appointed Administrator by the Order of this Honorable Court dated April 12, 1988, and discharged his duties starting April 22, 1988, after properly posting his administrator's bond up to this date, or more than fourteen (14) years later. Previously, there was the co-administrator Atty. William H. Quasha, but he has already passed away.

(2)

That, together with Co-administrator Atty. William H. Quasha, they have performed diligently and conscientiously their duties as Co-administrators, having paid the required Estate tax and settled the various claims against the Estate, totaling approximately twenty (20) claims, and the only remaining claim is the unmeritorious claim of LCN Construction Corp., now pending before this Honorable Court;

(3)

That for all their work since April 22, 1988, up to July 1992, or for four (4) years, they were only given the amount of P20,000.00 each on November 28, 1988; and another P50,00.00 each on October 1991; and the amount of P100,000.00 each on July 1992; or a total of P170,000.00 to cover their administration fees, counsel fees and expenses;

(4)

That through their work, they were able to settle all the testate (sic) claims except the remaining baseless claim of LCN Construction Corp., and were able to dismiss two (2) foreign claims, and were also able to increase the monetary value of the estate from roughly over P1Million to the present P4,738,558.63 as of August 25, 2002 and maturing on September 27, 2002; and the money has always been with the Philippine National Bank, as per the Order of this Honorable Court;

(5)

That since July 1992, when the co-administrators were paid P100,000.00 each, nothing has been paid to either Administrator Syquia or his client, the widow Consuelo Triviere; nor to the Quasha Law Offices or their clients, the children of the deceased Raymond Triviere;

(6)

That as this Honorable Court will notice, Administrator Syquia has always been present during the hearings held for the many years of this case; and the Quasha Law Offices has always been represented by its counsel, Atty. Redentor C. Zapata; and after all these years, their clients have not been given a part of their share in the estate;

(7)

That Administrator Syquia, who is a lawyer, is entitled to additional Administrator's fees since, as provided in Section 7, Rule 85 of the Revised Rules of Court:

"x x x where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed..."

In addition, Atty. Zapata has also been present in all the years of this case. In addition, they have spent for all the costs of litigation especially the transcripts, as out-of-pocket expenses.

(8)

That considering all the foregoing, especially the fact that neither the Administrator or his client, the widow; and the Quasha Law Offices or their clients, the children of the deceased, have received any money for more than ten (10) years now, they respectfully move that the amount of P1Million be taken from the Estate funds, to be divided as follows:

a)

P450,000.00 as share of the children of the deceased [Triviere] who are represented by the Quasha Ancheta Peña & Nolasco Law Offices;

b)

P200,000.00 as attorney's fees and litigation expenses for the Quasha Ancheta Peña & Nolasco Law Offices;

c)

P150,000.00 as share for the widow of the deceased [Raymond Triviere], Amy Consuelo Triviere; and

d)

P200,000.00 for the administrator Syquia, who is also the counsel of the widow; and for litigation costs and expenses.

LCN, as the only remaining claimant[4] against the Intestate Estate of the Late Raymond Triviere in Special Proceedings Case No. M-1678, filed its Comment on/Opposition to the afore-quoted Motion on 2 October 2002. LCN countered that the RTC had already resolved the issue of payment of litigation expenses when it denied the first Motion for Payment filed by Atty. Syquia and Atty. Quasha for failure of the administrators to submit an accounting of the assets and expenses of the estate as required by the court. LCN also averred that the administrators and the heirs of the late Raymond Triviere had earlier agreed to fix the former's fees at only 5% of the gross estate, based on which, per the computation of LCN, the administrators were even overpaid P55,000.00. LCN further asserted that contrary to what was stated in the second Motion for Payment, Section 7, Rule 85 of the Revised Rules of Court was inapplicable,[5] since the administrators failed to establish that the estate was large, or that its settlement was attended with great difficulty, or required a high degree of capacity on the part of the administrators. Finally, LCN argued that its claims are still outstanding and chargeable against the estate of the late Raymond Triviere; thus, no distribution should be allowed until they have been paid; especially considering that as of 25 August 2002, the claim of LCN against the estate of the late Raymond Triviere amounted to P6,016,570.65 as against the remaining assets of the estate totaling P4,738,558.63, rendering the latter insolvent.

On 12 June 2003, the RTC issued its Order[6] taking note that "the widow and the heirs of the deceased Triviere, after all the years, have not received their respective share (sic) in the Estate x x x."

The RTC declared that there was no more need for accounting of the assets and liabilities of the estate considering that:

[T]here appears to be no need for an accounting as the estate has no more assets except the money deposited with the Union Bank of the Philippines under Savings Account No. 12097-000656-0 x x x; on the estate taxes, records shows (sic) that the BIR Revenue Region No. 4-B2 Makati had issued a certificate dated April 27, 1988 indicating that the estate taxes has been fully paid.[7]

As to the payment of fees of Atty. Syquia and the Quasha Law Office, the RTC found as follows:

[B]oth the Co-Administrator and counsel for the deceased (sic) are entitled to the payment for the services they have rendered and accomplished for the estate and the heirs of the deceased as they have over a decade now spent so much time, labor and skill to accomplish the task assigned to them; and the last time the administrators obtained their fees was in 1992.[8]

Hence, the RTC granted the second Motion for Payment; however, it reduced the sums to be paid, to wit:

In view of the foregoing considerations, the instant motion is hereby GRANTED. The sums to be paid to the co-administrator and counsel for the heirs of the deceased Triviere are however reduced.

Accordingly, the co-administrator Atty. Syquia and aforementioned counsel are authorized to pay to be sourced from the Estate of the deceased as follows:

a)

P450,000.00 as share of the children of the deceased who are represented by the Quasha, Ancheta, Pena, Nolasco Law Offices;

b)

P100,000.00 as attorney's fees and litigation expenses for said law firm;

c)

P150,000.00 as share for the widow of the deceased Amy Consuelo Triviere; and

d)

P100,000.00 for the Co-administrator Atty. Enrique P. Syquia and for litigation costs and expenses.[9]

LCN filed a Motion for Reconsideration[10] of the foregoing Order on 2 July 2003, but it was denied by the RTC on 29 October 2003.[11]

On 13 May 2004, LCN sought recourse from the Court of Appeals by assailing in CA-G.R. SP No. 81296, a Petition for Certiorari, the RTC Orders dated 12 June 2003 and 2 July 2003, for having been rendered with grave abuse of discretion.[12] LCN maintained that:

(1)

The administrator's claim for attorney's fees, aside from being prohibited under paragraph 3, Section 7 of Rule 85 is, together with administration and litigation expenses, in the nature of a claim against the estate which should be ventilated and resolved pursuant to Section 8 of Rule 86;

(2)

The awards violate Section 1, Rule 90 of the Rules of Court, as there still exists its (LCN's) unpaid claim in the sum of P6,016,570.65; and

(3)

The alleged deliberate failure of the co-administrators to submit an accounting of the assets and liabilities of the estate does not warrant the Court's favorable action on the motion for payment.[13]

On 11 May 2006, the Court of Appeals promulgated a Decision essentially ruling in favor of LCN.

While the Court of Appeals conceded that Atty. Syquia and the Quasha Law Office, as the administrators of the estate of the late Raymond Triviere, were entitled to administrator's fees and litigation expenses, they could not claim the same from the funds of the estate. Referring to Section 7, Rule 85 of the Revised Rules of Court, the appellate court reasoned that the award of expenses and fees in favor of executors and administrators is subject to the qualification that where the executor or administrator is a lawyer, he shall not charge against the estate any professional fees for legal services rendered by him. Instead, the Court of Appeals held that the attorney's fees due Atty. Syquia and the Quasha Law Offices should be borne by their clients, the widow and children of the late Raymond Triviere, respectively.

The appellate court likewise revoked the P450,000.00 share and P150,000.00 share awarded by the RTC to the children and widow of the late Raymond Triviere, respectively, on the basis that Section 1, Rule 91 of the Revised Rules of Court proscribes the distribution of the residue of the estate until all its obligations have been paid.

The appellate court, however, did not agree in the position of LCN that the administrators' claims against the

estate should have been presented and resolved in accordance with Section 8 of Rule 86 of the Revised Rules of Court. Claims against the estate that require presentation under Rule 86 refer to "debts or demands of a pecuniary nature which could have been enforced against the decedent during his lifetime and which could have been reduced to simple judgment and among which are those founded on contracts." The Court of Appeals also found the failure of the administrators to render an accounting excusable on the basis of Section 8, Rule 85 of the Revised Rules of Court.[14]

Finding the Petition for Certiorari of LCN partly meritorious, the Court of Appeals decreed:

WHEREFORE, premises considered, the instant petition is hereby PARTLY GRANTED. The assailed Orders of the public respondent are hereby AFFIRMED with MODIFICATION in that -

(1)

the shares awarded to the heirs of the deceased Triviere in the assailed Order of June 12, 2003 are hereby DELETED; and

(2)

the attorney's fees awarded in favor of the co-administrators are hereby DELETED. However, inasmuch as the assailed order fails to itemize these fees from the litigation fees/administrator's fees awarded in favor of the co-administrators, public respondent is hereby directed to determine with particularity the fees pertaining to each administrator.[15]

Petitioner filed a Motion for Reconsideration[16] of the 11 May 2006 Decision of the Court of Appeals. The Motion, however, was denied by the appellate court in a Resolution dated 22 September 2006,[17] explaining that:

In sum, private respondents did not earlier dispute [herein respondent LCN's] claim in its petition that the law firm and its lawyers served as co-administrators of the estate of the late Triviere. It is thus quite absurd for the said law firm to now dispute in the motion for reconsideration its being a co-administrator of the estate.

[Herein petitioners], through counsel, likewise appear to be adopting in their motion for reconsideration a stance conflicting with their earlier theory submitted to this Court. Notably, the memorandum for [petitioner] heirs states that the claim for attorney's fees is supported by the facts and law. To support such allegation, they contend that Section 7 (3) of Rule 85 of the 1997 Rules of Civil Procedure finds no application to the instant case since "what is being charged are not professional fees for legal services rendered but payment for administration of the Estate which has been under the care and management of the co-administrators for the past fourteen (14) years." Their allegation, therefore, in their motion for reconsideration that Section 7 (3) of Rule 85 is inapplicable to the case of Quasha Law Offices because it is "merely seeking payment for legal services rendered to the estate and for litigation expenses" deserves scant consideration.

x x x x

WHEREFORE, premises considered, private respondents' motion for reconsideration is hereby DENIED for lack of merit. [18]

Exhausting all available legal remedies, petitioners filed the present Petition for Review on Certiorari based on the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE AWARD IN FAVOR OF THE HEIRS OF THE LATE RAYMOND TRIVIERE IS ALREADY A DISTRIBUTION OF THE RESIDUE OF THE ESTATE.

II.

THE HONORABLE COURT OF APPEALS ERRED IN NULLIFYING THE AWARD OF ATTORNEY'S FEES IN FAVOR OF THE CO-ADMINISTRATORS

I

The Court of Appeals modified the 12 June 2003 Order of the RTC by deleting the awards of P450,000.00 and P150,000.00 in favor of the children and widow of the late Raymond Triviere, respectively. The appellate court adopted the position of LCN that the claim of LCN was an obligation of the estate which was yet unpaid and, under Section 1, Rule 90 of the Revised Rules of Court, barred the distribution of the residue of the estate.

Petitioners, though, insist that the awards in favor of the petitioner children and widow of the late Raymond Triviere is not a distribution of the residue of the estate, thus, rendering Section 1, Rule 90 of the Revised Rules of Court inapplicable.

Section 1, Rule 90 of the Revised Rules of Court provides:

Section 1. When order for distribution of residue made. - When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

According to petitioners, the 12 June 2003 Order of the RTC should not be construed as a final order of distribution. The 12 June 2003 RTC Order granting the second Motion for Payment is a mere interlocutory order that does not end the estate proceedings. Only an order of distribution directing the delivery of the residue of the estate to the proper distributees brings the intestate proceedings to a close and, consequently, puts an end to the administration and relieves the administrator of his duties.

A perusal of the 12 June 2003 RTC Order would immediately reveal that it was not yet distributing the residue of the estate. The said Order grants the payment of certain amounts from the funds of the estate to the petitioner children and widow of the late Raymond Triviere considering that they have not received their respective shares therefrom for more than a decade. Out of the reported P4,738,558.63 value of the estate, the petitioner children and widow were being awarded by the RTC, in its 12 June 2003 Order, their shares in the collective amount of P600,000.00. Evidently, the remaining portion of the estate still needs to be settled. The intestate proceedings were not yet concluded, and the RTC still had to hear and rule on the pending claim of LCN against the estate of the late Raymond Triviere and only thereafter can it distribute the residue of the estate, if any, to his heirs.

While the awards in favor of petitioner children and widow made in the RTC Order dated 12 June 2003 was not

yet a distribution of the residue of the estate, given that there was still a pending claim against the estate, still, they did constitute a partial and advance distribution of the estate. Virtually, the petitioner children and widow were already being awarded shares in the estate, although not all of its obligations had been paid or provided for.

Section 2, Rule 109 of the Revised Rules of Court expressly recognizes advance distribution of the estate, thus:

Section 2. Advance distribution in special proceedings. - Notwithstanding a pending controversy or appeal in proceedings to settle the estate of a decedent, the court may, in its discretion and upon such terms as it may deem proper and just, permit that such part of the estate as may not be affected by the controversy or appeal be distributed among the heirs or legatees, upon compliance with the conditions set forth in Rule 90 of these rules. (Emphases supplied.)

The second paragraph of Section 1 of Rule 90 of the Revised Rules of Court allows the distribution of the estate prior to the payment of the obligations mentioned therein, provided that "the distributees, or any of them, gives a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs."

In sum, although it is within the discretion of the RTC whether or not to permit the advance distribution of the estate, its exercise of such discretion should be qualified by the following: [1] only part of the estate that is not affected by any pending controversy or appeal may be the subject of advance distribution (Section 2, Rule 109); and [2] the distributees must post a bond, fixed by the court, conditioned for the payment of outstanding obligations of the estate (second paragraph of Section 1, Rule 90). There is no showing that the RTC, in awarding to the petitioner children and widow their shares in the estate prior to the settlement of all its obligations, complied with these two requirements or, at the very least, took the same into consideration. Its Order of 12 June 2003 is completely silent on these matters. It justified its grant of the award in a single sentence which stated that petitioner children and widow had not yet received their respective shares from the estate after all these years. Taking into account that the claim of LCN against the estate of the late Raymond Triviere allegedly amounted to P6,016,570.65, already in excess of the P4,738,558.63 reported total value of the estate, the RTC should have been more prudent in approving the advance distribution of the same.

Petitioners earlier invoked *Dael v. Intermediate Appellate Court*,^[19] where the Court sustained an Order granting partial distribution of an estate.

However, *Dael* is not even on all fours with the case at bar, given that the Court therein found that:

Where, however, the estate has sufficient assets to ensure equitable distribution of the inheritance in accordance with law and the final judgment in the proceedings and it does not appear there are unpaid obligations, as contemplated in Rule 90, for which provisions should have been made or a bond required, such partial distribution may be allowed. (Emphasis supplied.)

No similar determination on sufficiency of assets or absence of any outstanding obligations of the estate of the late Raymond Triviere was made by the RTC in this case. In fact, there is a pending claim by LCN against the estate, and the amount thereof exceeds the value of the entire estate.

Furthermore, in *Dael*, the Court actually cautioned that partial distribution of the decedent's estate pending final termination of the testate or intestate proceeding should as much as possible be discouraged by the courts, and, except in extreme cases, such form of advances of inheritance should not be countenanced. The reason for this rule is that courts should guard with utmost zeal and jealousy the estate of the decedent to the end that the creditors thereof be adequately protected and all the rightful heirs be assured of their shares in the inheritance.

Hence, the Court does not find that the Court of Appeals erred in disallowing the advance award of shares by the

RTC to petitioner children and the widow of the late Raymond Triviere.

II

On the second assignment of error, petitioner Quasha Law Office contends that it is entitled to the award of attorney's fees and that the third paragraph of Section 7, Rule 85 of the Revised Rules of Court, which reads:

Section 7. What expenses and fees allowed executor or administrator. Not to charge for services as attorney. Compensation provided by will controls unless renounced. x x x.

x x x x

When the executor or administrator is an attorney, he shall not charge against the estate any professional fees for legal services rendered by him. (Emphasis supplied.)

is inapplicable to it. The afore-quoted provision is clear and unequivocal and needs no statutory construction. Here, in attempting to exempt itself from the coverage of said rule, the Quasha Law Office presents conflicting arguments to justify its claim for attorney's fees against the estate. At one point, it alleges that the award of attorney's fees was payment for its administration of the estate of the late Raymond Triviere; yet, it would later renounce that it was an administrator.

In the pleadings filed by the Quasha Law Office before the Court of Appeals, it referred to itself as co-administrator of the estate.

In the Comment submitted to the appellate court by Atty. Doronila, the member-lawyer then assigned by the Quasha Law Office to the case, it stated that:

The 12 June 2003 Order granted the Motion for Payment filed by Co-Administrator and counsel Atty. Enrique P. Syquia and the counsel Atty. Cirilo E. Doronila and Co-Administrator for the children of the late Raymond Triviere. x x x.[20] (Emphasis supplied.)

It would again in the same pleading claim to be the "co-administrator and counsel for the heirs of the late Raymond Triviere." [21]

Finally, the Memorandum it submitted to the Court of Appeals on behalf of its clients, the petitioner-children of the late Raymond Triviere, the Quasha Law Office alleged that:

- The petition assails the Order of the Honorable Regional Trial Court of Makati, Branch 63 granting the Motion for Payment filed by Co-Administrators Atty. Enrique P. Syquia and the undersigned counsel together with the children of the deceased Raymond Triviere, and the Order dated 29 October 2003 denying Petitioner's Motion for Reconsideration of the First Order.

x x x x

- Statement of Antecedent Facts

x x x x

- On 13 May 2004, Atty. Enrique Syquia, co-administrator and counsel for respondent Amy Consuelo Triviere and the undersigned counsel, co-administrator and counsel for the children of the late Raymond Triviere filed their Comment.[22]

Petitioner Quasha Law Office asserts that it is not within the purview of Section 7, Rule 85 of the Revised Rules of Court since it is not an appointed administrator of the estate.[23] When Atty. Quasha passed away in 1996, Atty. Syquia was left as the sole administrator of the estate of the late Raymond Triviere. The person of Atty. Quasha was distinct from that of petitioner Quasha Law Office; and the appointment of Atty. Quasha as

administrator of the estate did not extend to his law office. Neither could petitioner Quasha Law Office be deemed to have substituted Atty. Quasha as administrator upon the latter's death for the same would be in violation of the rules on the appointment and substitution of estate administrators, particularly, Section 2, Rule 82 of the Revised Rules of Court.[24] Hence, when Atty. Quasha died, petitioner Quasha Law Office merely helped in the settlement of the estate as counsel for the petitioner children of the late Raymond Triviere.

In its Memorandum before this Court, however, petitioner Quasha Law Office argues that "what is being charged are not professional fees for legal services rendered but payment for administration of the Estate which has been under the care and management of the co-administrators for the past fourteen (14) years." [25]

On the other hand, in the Motion for Payment filed with the RTC on 3 September 2002, petitioner Quasha Law Office prayed for P200,000.00 as "attorney's fees and litigation expenses." Being lumped together, and absent evidence to the contrary, the P200,000.00 for attorney's fees and litigation expenses prayed for by the petitioner Quasha Law Office can be logically and reasonably presumed to be in connection with cases handled by said law office on behalf of the estate. Simply, petitioner Quasha Law Office is seeking attorney's fees as compensation for the legal services it rendered in these cases, as well as reimbursement of the litigation expenses it incurred therein.

The Court notes with disfavor the sudden change in the theory by petitioner Quasha Law Office. Consistent with discussions in the preceding paragraphs, Quasha Law Office initially asserted itself as co-administrator of the estate before the courts. The records do not belie this fact. Petitioner Quasha Law Office later on denied it was substituted in the place of Atty. Quasha as administrator of the estate only upon filing a Motion for Reconsideration with the Court of Appeals, and then again before this Court. As a general rule, a party cannot change his theory of the case or his cause of action on appeal.[26] When a party adopts a certain theory in the court below, he will not be permitted to change his theory on appeal, for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process.[27] Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage.[28]

This rule, however, admits of certain exceptions.[29] In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.[30]

On the foregoing considerations, this Court finds it necessary to exercise leniency on the rule against changing of theory on appeal, consistent with the rules of fair play and in the interest of justice. Petitioner Quasha Law Office presented conflicting arguments with respect to whether or not it was co-administrator of the estate. Nothing in the records, however, reveals that any one of the lawyers of Quasha Law Office was indeed a substitute administrator for Atty. Quasha upon his death.

The court has jurisdiction to appoint an administrator of an estate by granting letters of administration to a person not otherwise disqualified or incompetent to serve as such, following the procedure laid down in Section 6, Rule 78 of the Rules of Court.

Corollary thereto, Section 2, Rule 82 of the Rules of Court provides in clear and unequivocal terms the modes for replacing an administrator of an estate upon the death of an administrator, to wit:

Section 2. Court may remove or accept resignation of executor or administrator. Proceedings upon death, resignation, or removal. x x x.

When an executor or administrator dies, resigns, or is removed the remaining executor or administrator may administer the trust alone, unless the court grants letters to someone to act with him. If there is no remaining executor or administrator, administration may be granted to any suitable person.

The records of the case are wanting in evidence that Quasha Law Office or any of its lawyers substituted Atty. Quasha as co-administrator of the estate. None of the documents attached pertain to the issuance of letters of administration to petitioner Quasha Law Office or any of its lawyers at any time after the demise of Atty. Quasha in 1996. This Court is thus inclined to give credence to petitioner's contention that while it rendered legal services for the settlement of the estate of Raymond Triviere since the time of Atty. Quasha's death in 1996, it did not serve as co-administrator thereof, granting that it was never even issued letters of administration.

The attorney's fees, therefore, cannot be covered by the prohibition in the third paragraph of Section 7, Rule 85 of the Revised Rules of Court against an attorney, to charge against the estate professional fees for legal services rendered by them.

However, while petitioner Quasha Law Office, serving as counsel of the Triviere children from the time of death of Atty. Quasha in 1996, is entitled to attorney's fees and litigation expenses of P100,000.00 as prayed for in the Motion for Payment dated 3 September 2002, and as awarded by the RTC in its 12 June 2003 Order, the same may be collected from the shares of the Triviere children, upon final distribution of the estate, in consideration of the fact that the Quasha Law Office, indeed, served as counsel (not anymore as co-administrator), representing and performing legal services for the Triviere children in the settlement of the estate of their deceased father.

Finally, LCN prays that as the contractor of the house (which the decedent caused to be built and is now part of the estate) with a preferred claim thereon, it should already be awarded P2,500,000.00, representing one half (1/2) of the proceeds from the sale of said house. The Court shall not take cognizance of and rule on the matter considering that, precisely, the merits of the claim of LCN against the estate are still pending the proper determination by the RTC in the intestate proceedings below.

WHEREFORE, premises considered, the Petition for Review on Certiorari is hereby PARTLY GRANTED. The Decision dated 11 May 2006 and Resolution dated 22 September 2006 of the Court of Appeals in CA-G.R. SP No. 81296 are AFFIRMED, with the following MODIFICATIONS:

1)

Petitioner Quasha Law Office is entitled to attorney's fees of ONE HUNDRED THOUSAND PESOS (P100,000.00), for legal services rendered for the Triviere children in the settlement of the estate of their deceased father, the same to be paid by the Triviere children in the manner herein discussed; and

2)

Attorneys Enrique P. Syquia and William H. Quasha are entitled to the payment of their corresponding administrators' fees, to be determined by the RTC handling Special Proceedings Case No. M-1678, Branch 63 of the Makati RTC, the same to be chargeable to the estate of Raymond Triviere.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; rollo, pp. 43-52.

[2] Id. at 54-56.

[3] Rollo, pp. 72-76.

[4] Respondent is a building contractor collecting payment for services rendered to the late Raymond Triviere in the construction of a house together with civil works on change orders and miscellaneous additional works. The claim in the amount of P6,016,570.65 allegedly represents the unpaid principal balance of the original contract, change orders, miscellaneous additional works, security, insurance, accrued interest and attorney's fees due and demandable from the Estate.

[5] Rollo, pp. 77-82.

[6] Id. at 88-89.

[7] Id.

[8] Id.

[9] Id. at 89.

[10] Id. at 90-94.

[11] Id. at 96.

[12] Id. at 97-142.

[13] Id. at 47.

[14] Section 8, Rule 85 of the Rules of Court provides -

Sec. 8. When executor or administrator to render account. - Every executor or administrator shall render an account of his administration within one (1) year from the time of receiving letters testamentary or of administration, unless the court otherwise directs because of extensions of time for presenting claims against, or paying the debts of, the estate, or for disposing of the estate; and he shall render such further accounts as the court may require until the estate is wholly settled.

[15] Rollo, p. 51.

[16] Id. at 156-165.

[17] Id. at 54-56.

[18] Id. at 55-56.

[19] G.R. No. 68873, 31 March 1989, 171 SCRA 526, 536.

[20] CA rollo, p. 171.

[21] Id. at 181.

[22] Id. at 254.

[23] Rollo, p. 19.

[24] Section 2. Court may remove or accept resignation of executor or administrator; Proceedings upon death, resignation, or removal. - x x x When an executor or administrator dies, resigns, or is removed the remaining executor or administrator may administer the trust alone, unless the court grants letters to someone to act with him. x x x.

[25] Petitioners' Memorandum; rollo, p. 228.

[26] *Mon v. Court of Appeals*, G.R. No. 118292, 14 April 2004, 427 SCRA 165, 171; *Lianga Lumber Company v. Lianga Timber Co., Inc.*, 166 Phil. 661, 687 (1977).

[27] *Naval v. Court of Appeals*, G.R. No. 167412, 22 February 2006, 483 SCRA 102, 109; *Dosch v. National Labor Relations Commission*, 208 Phil. 259, 272 (1983); *Capacete v. Baroro*, 453 Phil. 392, 400 (2003).

[28] *Sta. Rosa Realty Development Corporation v. Amante*, G.R. No. 112526, 16 March 2005, 453 SCRA 432, 477.

[29] *Capacete v. Baroro*, supra note 27.

[30] *Lianga Lumber Company v. Lianga Timber Co., Inc.*, supra note 26.

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