

JOSE C. QUIRANTE AND DANTE CRUZ, PETITIONERS, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT, MANUEL C. CASASOLA, AND ESTRELLITA C. CASASOLA, RESPONDENTS.

G.R. No. 73886. January 31, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

This appeal by certiorari seeks to set aside the judgment^[1] of the former Intermediate Appellate Court promulgated on November 6, 1985 in AC-G.R. No. SP-03640,^[2] which found the petition for certiorari therein meritorious, thus:

"Firstly, there is still pending in the Supreme Court a petition which may or may not ultimately result in the granting to the Isasola (sic) family of the total amount of damages given by the respondent Judge. Hence the award of damages confirmed in the two assailed Orders may be premature.

"Secondly, assuming that the grant of damages to the family is eventually ratified, the alleged confirmation of attorney's fees will not and should not adversely affect the non-signatories thereto.

"WHEREFORE, in view of the grave abuse of discretion (amounting to lack of jurisdiction) committed by the respondent Judge, We hereby SET ASIDE his questioned orders of March 20, 1984 and May 25, 1984. The restraining order previously issued is made permanent."^[3]

The challenged decision of respondent court succinctly sets out the factual origin of this case as follows:

"x x x Dr. Indalecio Casasola, (father of respondents) had a contract with a building contractor named Norman GUERRERO. The Philippine American General Insurance Co. Inc. (PHILAMGEN, for short) acted as bondsman for GUERRERO. In view of GUERRERO'S failure to perform his part of the contract within the period specified, Dr. Indalecio Casasola, thru his counsel, Atty. John Quirante, sued both GUERRERO and PHILAMGEN before the Court of First Instance of Manila, now the Regional Trial Court (RTC) of Manila for damages, with PHILAMGEN filing a cross-claim against GUERRERO for indemnification. The RTC rendered a decision dated October 16, 1981, x x x ".^[4]

In said decision, the trial court ruled in favor of the plaintiff by rescinding the contract; ordering GUERRERO and PHILAMGEN to pay the plaintiff actual damages in the amount of P129,430.00, moral damages in the amount of P50,000.00, exemplary damages in the amount of P40,000.00 and attorney's fees in the amount of P30,000.00; ordering Guerrero alone to pay liquidated damages of P300.00 a day from December 15, 1978 to July 16, 1979; and ordering PHILAMGEN to pay the plaintiff the amount of the surety bond equivalent to P120,000.00.^[5] A motion for reconsideration filed by PHILAMGEN was denied by the trial court on November 4, 1982.^[6]

Not satisfied with the decision of the trial court, PHILAMGEN filed a notice of appeal but the same was not given due course because it was allegedly filed out of time. The trial court thereafter issued a writ of execution.^[7]

A petition was filed in AC-G.R. No. 00202 with the Intermediate Appellate Court for the quashal of the writ of

execution and to compel the trial court to give due course to the appeal. The petition was dismissed on May 4, 1983[8] so the case was elevated to this Court in G.R. No. 64334.[9] In the meantime, on November 16, 1981, Dr. Casasola died leaving his widow and several children as survivors.[10]

On June 18, 1983, herein petitioner Quirante filed a motion in the trial court for the confirmation of his attorney's fees. According to him, there was an oral agreement between him and the late Dr. Casasola with regard to his attorney's fees, which agreement was allegedly confirmed in writing by the widow, Asuncion Vda. de Casasola, and the two daughters of the deceased, namely, Mely C. Garcia and Virginia C. Nazareno. Petitioner avers that pursuant to said agreement, the attorney's fees would be computed as follows:

A. In case of recovery of the P120,000.00 surety bond, the attorney's fees of the undersigned counsel (Atty. Quirante) shall be P30,000.00.

B. In case the Honorable Court awards damages in excess of the P120,000.00 bond, it shall be divided equally between the Heirs of I. Casasola, Atty. John C. Quirante and Atty. Dante Cruz.

The trial court granted the motion for confirmation in an order dated March 20, 1984, despite an opposition thereto. It also denied the motion for reconsideration of the order of confirmation in its second order dated May 25, 1984.[11]

These are the two orders which are assailed in this case.

Well settled is the rule that counsel's "claim for attorney's fees may be asserted either in the very action in which the services in question have been rendered, or in a separate action. If the first alternative is chosen, the Court may pass upon said claim, even if its amount were less than the minimum prescribed by law for the jurisdiction of said court, upon the theory that the right to recover attorney's fees is but an incident of the case in which the services of counsel have been rendered".[12] It also rests on the assumption that the court trying the case is to a certain degree already familiar with the nature and extent of the lawyer's services. The rule against multiplicity of suits will in effect be subserved.[13]

What is being claimed here as attorney's fees by petitioners is, however, different from attorney's fees as an item of damages provided for under Article 2208 of the Civil Code, wherein the award is made in favor of the litigant, not of his counsel, and the litigant, not his counsel, is the judgment creditor who may enforce the judgment for attorney's fees by execution.[14] Here, the petitioners' claims are based on an alleged contract for professional services, with them as the creditors and the private respondents as the debtors.

In filing the motion for confirmation of attorney's fees, petitioners chose to assert their claims in the same action. This is also a proper remedy under our jurisprudence. Nevertheless, we agree with the respondent court that the confirmation of attorney's fees is premature. As it correctly pointed out, the petition for review on certiorari filed by PHILAMGEN in this Court (G.R. No. 64334) "may or may not ultimately result in the granting to the Isasola (sic) family of the total amount of damages" awarded by the trial court. This is especially true in the light of subsequent developments in G.R. No. 64334. In a decision promulgated on May 21, 1987, the Court rendered judgment setting aside the decision of May 4, 1983 of the Intermediate Appellate Court in AC--G.R. No. 00202 and ordering the respondent Regional Trial Court of Manila to certify the appeal of PHILAMGEN from said trial court's decision in Civil Case No. 122920 to the Court of Appeals. Said decision of the Court became final and executory on June 25, 1987.

Since the main case from which the petitioner's claims for their fees may arise has not yet become final, the determination of the propriety of said fees and the amount thereof should be held in abeyance. This procedure gains added validity in the light of the rule that the remedy for recovering attorney's fees as an incident of the main action may be availed of only when something is due to the client. Thus, it was ruled that:

"x x x an attorney's fee cannot be determined until after the main litigation has been decided and the subject of recovery is at the disposition of the court. The issue over attorney's fee only arises when something has been recovered from which the fee is to be paid." [15]

It is further observed that the supposed contract alleged by petitioners as the basis for their fees provides that the recovery of the amounts claimed is subject to certain contingencies. It is subject to the condition that the fee shall be P30,000.00 in case of recovery of the P120,000.00 surety bond, plus an additional amount in case the award is in excess of said P120,000.00 bond, on the sharing basis hereinbefore stated.

With regard to the effect of the alleged confirmation of the attorney's fees by some of the heirs of the deceased, We are of the considered view that the orderly administration of justice dictates that such issue be likewise determined by the court a quo inasmuch as it also necessarily involves the same contingencies in determining the propriety and assessing the extent of recovery of attorney's fees by both petitioners herein. The court below will be in a better position, after the entire case shall have been adjudicated, inclusive of any liability of PHILAMGEN and the respective participations of the heirs of Dr. Casasola in the award, to determine with evidentiary support such matters like the basis for the entitlement in the fees of petitioner Dante Cruz and as to whether the agreement allegedly entered into with the late Dr. Casasola would be binding on all his heirs, as contended by petitioner Quirante.

We, therefore, take exception to and reject that portion of the decision of the respondent court which holds that the alleged confirmation of attorney's fees should not adversely affect the non-signatories thereto, since it is also premised on the eventual grant of damages to the Casasola family, hence the same objection of prematurity obtains and such a holding may be preemptive of factual and evidentiary matters that may be presented for consideration by the trial court.

WHEREFORE, with the foregoing observation, the decision of the respondent court subject of the present recourse is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Sarmiento, JJ., concur. Paras, J., no part, was the ponente in the IAC.

[1] Justice Edgardo L. Paras, ponente; Justices Vicente V. Mendoza and Luis A. Javellana, concurring; Fourth Special Cases Division.

[2] Manuel C. Casasola and Estrellita C. Casasola vs. Hon. Herminio C. Mariano, John C. Quirante and Dante Cruz.

[3] Rollo, 18-19.

[4] Rollo, 16.

[5] Rollo, 17.

[6] Rollo, G.R. No. 64334, 6.

[7] Decision, G.R. No. 64334, 4.

[8] Rollo, G.R. No. 64334, 13-16.

[9] Philippine American Insurance Co. Inc. vs. Intermediate Appellate Court, Judge Herminio C. Mariano, etc., and Indalecio Casasola.

[10] Rollo, 17.

[11] Ibid., 18.

[12] Tolentino vs. Escalona, et al., 26 SCRA 613 (1969).

[13] Palanca vs. Pecson, et al., 94 Phil. 419 (1954); Tolentino vs. Escalona, supra.

[14] Corpus vs. Cuaderno, 13 SCRA 591 (1965); Carino, et al. vs. Agricultural Credit & Cooperative Financing Administration, et al., 18 SCRA 183 (1966); Gan Tion vs. Court of Appeals, et al., 28 SCRA 235 (1969); Phoenix Publishing House, Inc. vs. Ramos, et al., G.R. No. L-32339, Mar. 29, 1988.

[15] Otto Gmur, Inc. vs. Revilla, et al., 55 Phil. 627 (1931); Lichauco vs. Court of Appeals, et al., 63 SCRA 123 (1975).

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