CEFERINO INCIONG, PETITIONER, VS. HONORABLE EUFEMIO DOMINGO, CHAIRMAN, COMMISSION ON AUDIT, RESPONDENTS.

G.R. No. 96628. July 03, 1992

Ponente: PARAS, J.

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PARAS, J.:

For failure of the Philippine Sugar Commission (PHILSUCOM), now Philippine Sugar Refineries Corporation, to pay real estate taxes due on its sugar refinery situated at Barangay Caloocan, Balayan, Batangas, the Provincial Treasurer of Batangas scheduled the sale of said refinery at public auction on March 6, 1986. To restrain the sale, PHILSUCOM filed a petition for prohibition in the Court of Appeals against the Provincial Treasurer and Provincial Assessor of Balayan, Batangas. The petition was docketed as CA GR SP No. 08467.

On March 5, 1986, the Court of Appeals issued a restraining order directing respondents therein to maintain the status quo.

Meanwhile, Barangay Caloocan thru herein petitioner Atty. Ceferino Inciong filed a Motion for Intervention alleging that it (Barangay Caloocan) is an indispensable party in the case as it has a 10% share of the property tax sought to be collected from PHILSUCOM.

Thereafter, Barangay Caloocan filed an Answer to PHILSUCOM's Petition as well as a motion for reconsideration of the restraining order of March 5, 1986.

On December 24, 1986, PHILSUCOM and the Municipal Treasurer of Balayan, Batangas entered into an Amnesty Compromise Agreement pursuant to and in conformity with Executive Order No. 42 dated August 22, 1986. The agreement was submitted to the Court of Appeals and the case was accordingly dismissed.

PHILSUCOM paid the amount of P7,199,887.51 to the Municipal Treasurer. Out of this amount, the Municipal Treasurer allocated to Barangay Caloocan as its share 10% or a total of P719,988.75.

Consequently, Atty. Ceferino Inciong filed a case for payment of attorney's fees against the Province of Batangas, Municipality of Balayan and Barangay Caloocan, before the Regional Trial Court, Branch XI, Balayan, Batangas. The case was docketed as Civil Case No. 1878.

On August 9, 1989, the Regional Trial Court rendered judgment in favor of Atty. Ceferino Inciong, the pertinent portion of which reads:

> "From the foregoing testimony and the supporting exhibits - D and D-1, it is gathered and established that indeed, the plaintiff attorney was requested and has acted as counsel for defendant Barangay Caloocan and rendered his utmost in prosecuting the case. As a result of his efforts and zeal in pursuing the case, defendant Barangay Caloocan was awarded the claim asked for, when finally the Philsucom acceded to a compromise agreement. Plaintiff's counsel, assistance and services should therefore be recognized. That he acted as counsel is established as even defendant Barangay Caloocan failed to deny the relationship and services rendered by failing to file its answer.

> "However, there was no formal contract as to the amount due the plaintiff by way of attorney's fees. Somewhere in his testimony plaintiff suggest that TEN PERCENT (10%) of the barangay share on the amount paid, be fair and just renumeration for all the expenses and services he rendered, which the Court finds such amount to be fair, proper and just, taking into consideration, the professional standing of the plaintiff as a lawyer, the time and efforts he exerted, the importance of the case. The law mandates that an attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered and the professional standing of the attorney.
>
> "The Court finds that a TEN PERCENT (10%) of what defendant Barangay Caloocan was awarded is fair and reasonable amount for the legal services of the plaintiff counsel.
>
> "WHEREFORE, partial judgment in the case is hereby rendered.

'1. Ordering the defendant Barangay Caloocan of the Municipality of Balayan, Batangas, to pay the plaintiff and by way of attorney's fees, the amount equivalent to a TEN PERCENT (10%) of the amount awarded to said defendant barangay.

'2. Ordering defendant barangay to pay the costs of suit.'

"SO ORDERED.." (p. 8, Rollo)

This decision has long become final, hence, a writ of execution was issued. But, when the Withdrawal Voucher was presented for audit to satisfy the writ of execution, the Provincial Auditor of Batangas referred the matter en consulta to the Director, COA Regional Trial Office No. IV.

In a 2nd Indorsement dated October 3, 1990, the COA Director referred the Auditor's query to respondent Chairman, Commission on Audit, with the information among others, that the request of the Barangay Captain of Caloocan for petitioner's legal assistance was not taken up nor approved by the Sangguniang Barangay nor was there any showing that it was approved by the Solicitor General and concurred in by COA as required under COA Circular No. 86-255, dated April 2, 1986.

In a 3rd Indorsement dated December 12, 1990, respondent Chairman Eufemio Domingo, Commission on Audit, in reply to the query stated that the hiring of petitioner by the Punong Barangay did not carry with it the approval of the Sangguniang Barangay as required under Section 91 (1-1) of the B.P. 337, nor was there any appropriation therefore; the hiring was not approved by the Solicitor General and concurred in by COA.

Hence, the instant petition.

Required to comment, the Office of the Solicitor General filed a Manifestation and Motion stating that after a careful study of this case, it is unable to agree with the position of respondent Chairman Eufemio Domingo in his 3rd Indorsement disallowing payment of attorney's fees to petitioner Atty. Ceferino Inciong by Barangay Caloocan. (p. 35, Rollo)

The Office of the Solicitor General was thus allowed to withdraw its appearance and the Comment for respondent was filed by COA's Legal Office.

The petition was given due course in Our Resolution dated July 30, 1991.

We grant the petition.

As correctly stated by the Office of the Solicitor General, the position of respondent Chairman of the COA disallowing payment of attorney's fees to petitioner Atty. Ceferino Inciong is not proper, in the light of the

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following considerations.

(1) The employment by Barangay Caloocan of petitioner as its counsel, even if allegedly unauthorized by the Sangguniang Barangay, is binding on Barangay Caloocan as it took no prompt measure to repudiate petitioner's employment (Province of Cebu v. Intermediate Appellate Court, 147 SCRA 447).

(2) The Decision dated August 9, 1989 of Branch XI, Regional Trial Court, Balayan, Batangas in Civil Case No. 1878, directing Barangay Caloocan to pay attorney's fees to petitioner, has become final and executory and is binding upon Barangay Caloocan (Mercado v. Court of Appeals, 162 SCRA 75).

(3) COA Circular No. 86-255 cannot diminish the substantive right of petitioner to recover attorney's fees under the final and executory Decision dated August 9, 1989 of the Regional Trial Court.

In its Comment, the respondent, thru the COA Legal Office states that PHILSUCOM paid the amount of P7,199,887.51 to the Municipal Treasurer under the Amnesty Compromise Agreement. Out of this amount, the Municipal Treasurer allocated to Barangay Caloocan as its share the amount of P719,988.75. This allocation is erroneous because pursuant to Republic Act No. 5447, Barangay Caloocan should only share from the basic tax which is 50% of what PHILSUCOM paid because the other half should go to the Special Education Fund. Under the said Republic Act No. 5447, the rightful share of Barangay Caloocan should be P359,994.38 only.

Thus, respondent prays that in the event the Court orders the payment of attorney's fees to petitioner this amount of P359,994.38 should be made as the basis therefor.

WHEREFORE, the petition is GRANTED and respondent is ordered to direct the payment of attorney's fees to petitioner Atty. Ceferino Inciong in an amount equivalent to 10% of P359,994.38

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

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