



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**EDMUNDO NAVAREZ,**

Petitioner,

**G.R. No. 191641**

Present:

CARPIO, *J.*, Chairperson,  
 BRION,  
 DEL CASTILLO,  
 MENDOZA, and  
 LEONEN, *JJ.*

- versus -

Promulgated:

**ATTY. MANUEL ABROGAR III,**

Respondent.

02 SEP 2015 *Manuel Abrogar III*

X-----

**DECISION**

**BRION, *J.*:**

This is a petition for *certiorari* under Rule 65<sup>1</sup> of the Rules of Court, filed from the October 16, 2009 Decision and the March 12, 2010 Resolution of the Court of Appeals (*CA*) in CA-G.R. SP No. 108675.<sup>2</sup> The *CA* dismissed the petition for *certiorari* that the present petitioner filed against the January 21, 2009 Order of the Regional Trial Court (*RTC*).

**ANTECEDENTS**

On July 30, 2007, petitioner Edmundo Navarez engaged the services of Abrogar Valerio Maderazo and Associates Law Offices (*the Firm*) through the respondent, Atty. Manuel Abrogar III. The Firm was to represent Navarez in Sp. Proc. No. Q-05-59112 entitled "*Apolonio Quesada, Jr. v. Edmundo Navarez*" as collaborating counsel of Atty. Perfecto Laguio. The case involved the settlement of the estate of Avelina Quesada-Navarez

<sup>1</sup> Petition, p. 3; *rollo*, p. 12.

<sup>2</sup> Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Fernanda Lampas Peralta and Ramon R. Garcia.

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that was then pending before the Regional Trial Court (*RTC*), Branch 83, Quezon City. The pertinent portions of the Retainer Agreement read:

Our services as **collaborating counsel** will cover investigation, research and representation with local banks, concerns regarding deposits (current and savings) and investment instruments evidenced by certificate of deposits. Our office may also initiate appropriate civil and/or criminal actions as well as administrative remedies needed to adjudicate the Estate of Avelina Quesada-Navarez expeditiously, peacefully and lawfully.

**Effective Date:** June 2007

**Acceptance Fee:** P100,000.00 in an installment basis

**Success Fee:** 2% of the total money value of your share as co-owner and heir of the Estate (payable proportionately upon your receipt of any amount)

**Appearance Fee:** P2,500.00 per Court hearing or administrative meetings and/or other meetings.

Filing of Motions and/or pleadings at our initiative shall be for your account and you will be billed accordingly.

**OUT-OF-POCKET EXPENSES:** Ordinary out-of-pocket expenses such as telex, facsimile, word processing, machine reproduction, and transportation expenses, as well as per diems and accommodations expenses incurred in undertaking work for you outside Metro Manila area and other special out-of-pocket expenses as you may authorized [sic] us to incur (which shall always be cleared with you in advance) shall be for your account. xxxx

On September 2, 2008, Navarez filed a Manifestation with the RTC that he was terminating the services of Atty. Abrogar. On the same day, Navarez also caused the delivery to Atty. Abrogar of a check in the amount of ₱220,107.51 – allegedly equivalent to one half of 7.5% of petitioner's ₱11,200,000.00 share in the estate of his deceased wife less Atty. Abrogar's cash advances.

On September 9, 2008, Atty. Abrogar manifested that with respect to the petitioner's one-half (½) share in the conjugal partnership, the RTC had already resolved the matter favorably because it had issued a release order for the petitioner to withdraw the amount. Atty. Abrogar further declared that the Firm was withdrawing as counsel □ effective upon the appointment of an Administrator of the estate □ from the remaining proceedings for the settlement of the estate of Avelina Quesada-Navarez.

On September 22, 2008, the petitioner wrote to Atty. Abrogar offering to pay his attorney's fees in accordance with their Retainer Agreement minus the latter's cash advances – an offer that Atty. Abrogar had previously refused in August 2008.

On October 7, 2008, Atty. Abrogar filed a Motion to Enter into the Records his attorney's lien pursuant to Rule 138, Section 37 of the Rules of Court.

On November 21, 2008, the motion was submitted for resolution without oral arguments.

On January 21, 2009, the RTC issued an order granting the motion and directed the petitioner to pay Atty. Abrogar's attorney's fees. The Order reads:

WHEREFORE, premises considered, it is hereby ordered:

1. That the attorney's lien of Manuel Abrogar III conformably with the Retainer Agreement dated July 30, 2007, be entered into the records of this case in consonance with Section 37, Rule 138 of the Rules of Court;
2. That oppositor Edmundo Navarez pay the amount of 7.5% of P11,196,675.05 to Manuel Abrogar III;
3. That the oppositor pay the administrative costs/expenses of P103,000.00 to the movant; and
4. That the prayers for P100,000.00 as exemplary damages, P200,000.00 as moral damages and for writ of preliminary attachment be denied.

SO ORDERED.

On February 18, 2009, the petitioner filed a Motion for Reconsideration.

On March 17, 2009, the RTC denied the motion for reconsideration and issued a Writ of Execution of its Order dated January 21, 2009.

The petitioner elevated the case to the CA *via* a petition for *certiorari*. He argued that the RTC committed grave abuse of discretion because: (1) the RTC granted Atty. Abrogar's claim for attorney's fees despite non-payment of docket fees; (2) the RTC denied him the opportunity of a full-blown trial to contradict Atty. Abrogar's claims and prove advance payments; and (3) the RTC issued a writ of execution even before the lapse of the reglementary period.

In its decision dated October 16, 2009, the CA dismissed the petition and held that the RTC did not commit grave abuse of discretion.

The petitioner moved for reconsideration which the CA denied in a Resolution dated March 12, 2010.

On April 6, 2010, and April 26, 2010, the petitioner filed his first and second motions for extension of time to file his petition for review. This

Court granted both motions for extension totaling thirty (30) days (or until May 5, 2010) in the Resolution dated July 26, 2010.

On May 5, 2010, the petitioner filed the present petition entitled “Petition for Review.” However, the contents of the petition show that it is a petition for *certiorari* under Rule 65 of the Rules of Court.<sup>3</sup>

### THE PETITION

The petitioner argues that the CA gravely erred in dismissing his petition for *certiorari* that challenged the RTC ruling ordering the payment of attorney’s fees. He maintains his argument that the RTC committed grave abuse of discretion because: (1) it granted Atty. Abrogar’s claim for attorney’s fees despite lack of jurisdiction due to non-payment of docket fees; (2) it granted the claim for attorney’s fees without requiring a full-blown trial and without considering his advance payments; and (3) it issued the writ of execution before the lapse of the reglementary period. The petitioner also points out that the CA nullified the RTC’s release order in CA-G.R. SP No. 108734.

In his Comment dated September 8, 2010, Atty. Abrogar adopted the CA’s position in its October 16, 2009 Decision.

### OUR RULING

We observe that the petitioner used the wrong remedy to challenge the CA’s decision and resolution. The petitioner filed a petition for *certiorari* under Rule 65, not a petition for review on *certiorari* under Rule 45. A special civil action for *certiorari* is a remedy of last resort, available only to raise jurisdictional issues when there is no appeal or any other plain, speedy, and adequate remedy under the law.

Nonetheless, in the spirit of liberality that pervades the Rules of Court<sup>4</sup> and in the interest of substantial justice,<sup>5</sup> this Court has, on appropriate occasions, treated a petition for *certiorari* as a petition for review on *certiorari*, particularly when: (1) the petition for *certiorari* was filed within the reglementary period to file a petition for review on *certiorari*;<sup>6</sup> (2) the petition avers errors of judgment;<sup>7</sup> and (3) when there is sufficient reason to justify the relaxation of the rules.<sup>8</sup> Considering that the present petition was filed within the extension period granted by this Court

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<sup>3</sup> Petition, pp. 1 and 3; see *rollo*, p. 12.

<sup>4</sup> Rules of Court, Rule 1, §6.

<sup>5</sup> *People v. Romualdez*, 581 Phil. 462, 477 (2008) citing *Solicitor General v. Metropolitan Manila Authority*, G.R. No. 102782, December 11, 1991, 204 SCRA 837.

<sup>6</sup> *Republic v. Court of Appeals*, 379 Phil. 92, 98 (2000); *Eternal Gardens Memorial Park Corp. v. Court of Appeals*, 347 Phil. 232, 256 (1997).

<sup>7</sup> *Delsan Transport Lines, Inc. v. Court of Appeals*, 335 Phil. 1066-1067, 1075 (1997).

<sup>8</sup> *City of Manila v. Hon. Grecia-Cuerdo*, G.R. No. 175273, 4 February 2014, 715 SCRA 182; *Tagle v. Equitable PCI Bank*, 575 Phil. 384, 403 (2008); *Oaminal v. Sps. Castillo*, 459 Phil. 542, 556 (2003); *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 389 Phil. 644 (2000).

and avers errors of law and judgment, this Court deems it proper to treat the present petition for *certiorari* as a petition for review on *certiorari* in order to serve the higher ends of justice.

With the procedural issue out of the way, the remaining issue is whether or not the CA erred when it held that the RTC acted within its jurisdiction and did not commit grave abuse of discretion when it ordered the payment of attorney's fees.

We find merit in the petition.

An attorney has a right to be paid a fair and reasonable compensation for the services he has rendered to a client. As a security for his fees, Rule 138, Section 37 of the Rules of Court grants an attorney an equitable right to a charging lien over money judgments he has secured in litigation for his client. For the lien to be enforceable, the attorney must have caused: (1) a statement of his claim to be entered in the record of the case while the court has jurisdiction over the case and before the full satisfaction of the judgment;<sup>9</sup> and (2) a written notice of his claim to be delivered to his client and to the adverse party.

However, the filing of the statement of the claim does not, by itself, legally determine the amount of the claim when the client disputes the amount or claims that the amount has been paid.<sup>10</sup> In these cases, both the attorney and the client have a right to be heard and to present evidence in support of their claims.<sup>11</sup> The proper procedure for the court is to ascertain the proper amount of the lien in a full dress trial before it orders the registration of the charging lien.<sup>12</sup> The necessity of a hearing is obvious and beyond dispute.<sup>13</sup>

In the present case, the RTC ordered the registration of Atty. Abrogar's lien without a hearing even though the client contested the amount of the lien. The petitioner had the right to be heard and to present evidence on the true amount of the charging lien. The RTC acted with grave abuse of discretion because it denied the petitioner his right to be heard, *i.e.*, the right to due process.

The registration of the lien should also be distinguished from the enforcement of the lien. Registration merely determines the birth of the lien.<sup>14</sup> The enforcement of the lien, on the other hand, can only take place once a final money judgment has been secured in favor of the client. The enforcement of the lien is a claim for attorney's fees that may be prosecuted

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<sup>9</sup> *G.A. Machineries, Inc. v. Court of Appeals*, 169 Phil 287, 294 (1977).

<sup>10</sup> *Dahlke v. Viña*, 51 Phil. 707 (1928).

<sup>11</sup> *Candelario v. Cañizares*, 114 Phil. 672, 677 (1962); *id.*

<sup>12</sup> *Integrated Construction Services, Inc. v. Hon. Relova*, 160 Phil. 654, 669 (1975).

<sup>13</sup> *Metropolitan Bank & Trust Co. v. Court of Appeals*, G.R. No. 86100-03, 23 January 1990, 181 SCRA 367, 376.

<sup>14</sup> *Bacolod Murcia Milling Company, Inc. v. Henares*, 107 Phil. 560, 566 (1960).

in the very action where the attorney rendered his services or in a separate action.

However, a motion for the enforcement of the lien is in the nature of an action commenced by a lawyer against his clients for attorney's fees.<sup>15</sup> As in every action for a sum of money, the attorney-movant must first pay the prescribed docket fees before the trial court can acquire jurisdiction to order the payment of attorney's fees.

In this case, Atty. Abrogar only moved for the registration of his lien. He did not pay any docket fees because he had not yet asked the RTC to enforce his lien. However, the RTC enforced the lien and ordered the petitioner to pay Atty. Abrogar's attorney's fees and administrative expenses.

Under this situation, the RTC had not yet acquired jurisdiction to enforce the charging lien because the docket fees had not been paid. The payment of docket fees is mandatory in all actions, whether separate or an offshoot of a pending proceeding. In *Lacson v. Reyes*,<sup>16</sup> this Court granted *certiorari* and annulled the decision of the trial court granting a "motion for attorney's fees" because the attorney did not pay the docket fees. Docket fees must be paid before a court can lawfully act on a case and grant relief. Therefore, the RTC acted without or in excess of its jurisdiction when it ordered the payment of the attorney's fees.

Lastly, the enforcement of a charging lien can only take place after a final money judgment has been rendered in favor of the client.<sup>17</sup> The lien only attaches to the money judgment due to the client and is contingent on the final determination of the main case. Until the money judgment has become final and executory, enforcement of the lien is premature.

The RTC again abused its discretion in this respect because it prematurely enforced the lien and issued a writ of execution even before the main case became final; no money judgment was as yet due to the client to which the lien could have attached itself. Execution was improper because the enforceability of the lien is contingent on a final and executory award of money to the client. This Court notes that in CA-G.R. SP No. 108734, the CA nullified the "award" to which the RTC attached the attorney's lien as there was nothing due to the petitioner. Thus, enforcement of the lien was premature.

The RTC's issuance of a writ of execution before the lapse of the reglementary period to appeal from its order is likewise premature. The Order of the RTC dated January 21, 2009, is an order that finally disposes of the issue on the amount of attorney's fees Atty. Abrogar is entitled to. The execution of a final order issues as a matter of right upon the expiration of

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<sup>15</sup> *Lacson v. Reyes*, 261 Phil. 876, 881 (1990).

<sup>16</sup> *Id.*

<sup>17</sup> *Metropolitan Bank & Trust Co. v. Court of Appeals*, *supra* note 13; *De la Peña v. Hidalgo*, 20 Phil. 323 (1911); *Palanca v. Pecson*, 94 Phil. 419 (1954).

the reglementary period if no appeal has been perfected.<sup>18</sup> Under Rule 39, Section 2 of the Rules of Court, discretionary execution can only be made before the expiration of the reglementary period upon a motion of the prevailing party with notice to the adverse party. Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.<sup>19</sup>

The RTC ordered execution without satisfying the requisites that would have justified discretionary execution. Atty. Abrogar had not moved for execution and there were no good reasons to justify the immediate execution of the RTC's order. Clearly, the RTC gravely abused its discretion when it ordered the execution of its order dated January 21, 2009, before the lapse of the reglementary period.

For these reasons, this Court finds that the CA erred when it held that the RTC did not commit grave abuse of discretion and acted without jurisdiction.

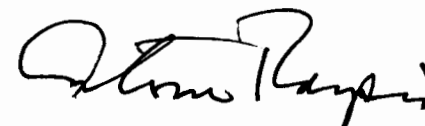
As our last word, this decision should not be construed as imposing unnecessary burden on the lawyer in collecting his just fees. But, as in the exercise of any other right conferred by law, the lawyer – and the courts – must avail of the proper legal remedies and observe the procedural rules to prevent the possibility, or even just the perception, of abuse or prejudice.<sup>20</sup>

**WHEREFORE**, premises considered, we hereby **GRANT** the petition. The decision of the Court of Appeals in CA-G.R. SP No. 108675 dated October 16, 2009, is hereby **REVERSED**, and the decision of the Regional Trial Court, Branch 83, Quezon City in Sp. Proc. No. Q-05-59112 is hereby **ANNULLED** and **SET ASIDE**.

**SO ORDERED.**

  
ARTURO D. BRION  
Associate Justice

**WE CONCUR:**

  
ANTONIO T. CARPIO  
Associate Justice  
Chairperson

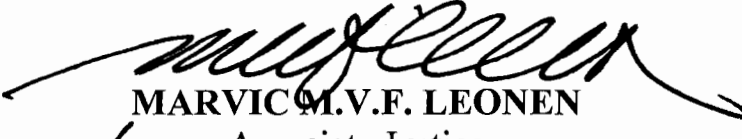
<sup>18</sup> Rule 39, §1 of the Rules of Court.

<sup>19</sup> Rule 39, §2 of the Rules of Court.

<sup>20</sup> *Supra* note 13.

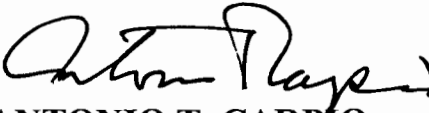
  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE CAPRAL MENDOZA**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice


**A T T E S T A T I O N**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**C E R T I F I C A T I O N**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice