

SECOND DIVISION

[G.R. No. 212346, July 07, 2016]

**RICHARD V. FUNK, PETITIONER, VS. SANTOS VENTURA
HOCORMA FOUNDATION, INC., FEDERICO O. ESCALER, JOSE M.
ZARAGOZA, DOMINGO L. MAPA, ERNESTO C. PEREZ AND
ARISTON ESTRADA, SR., RESPONDENTS.**

DECISION

BRION, J.:

Before the Court is a petition for review on *certiorari*^[1] filed by Atty. Richard V. Funk (*Atty. Funk*) to challenge the November 5, 2013 decision^[2] and the April 29, 2014 resolution^[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 97527.

The *CA* denied Atty. Funk's appeal from the order of the Regional Trial Court (*RTC*), Branch 66, Makati City, denying his *second motion for execution*.^[4]

ANTECEDENTS

In 1983, Atty. Funk represented Teodoro Santos (*Santos*) in a collection case against Philbank Corporation and in a transfer of properties to respondent Santos Ventura Hocorma Foundation, Inc. (*the Foundation*). The agreed attorney's fees were 25% and 10% of the market value of the properties.^[5]

Teodoro Santos executed a special power of attorney (*SPA*) to authorize Atty. Funk to collect his fees from the Foundation.^[6] The Foundation failed to fully pay the attorney's fees despite demand. Atty. Funk thus filed the case for the collection of his attorney's fees with the *RTC*.^[7]

On **February 14, 1994**, the *RTC* ordered the Foundation to pay Atty. Funk attorney's fees in the amount of P150,000.00 for the collection case and P500,000.00 for the transfer of properties. On Atty. Funk's motion for reconsideration, the *RTC* increased the attorney's fees to P918,919.50. The *RTC* also declared Atty. Funk co-owner of 10% of the properties whose market values were not established in court.^[8]

On appeal, the *CA* affirmed the *RTC* decision but held that Atty. Funk had no right of co-ownership over the properties. The Foundation appealed to this Court in a case docketed as **G.R. No. 131260** (*mother case*).^[9]

On **December 6, 2006**, we denied the Foundation's appeal and held that the issues it raised (whether the Foundation's Board of Trustees approved the *SPA* and whether the attorney's fees were reasonable) were questions of fact which we cannot review.

[10] We thus denied the Foundation's appeal and thereby effectively sustained the findings of the RTC and the CA.

Under these findings, the minutes of the Foundation's board meetings indicated that: (1) the SPA executed by Santos, when presented to the Board of Trustees on December 13, 1983, was unanimously confirmed, acknowledged, and approved; and (2) the Foundation even undertook to implement the retainer agreements between Atty. Funk and Santos.[11]

Our decision in the mother case became final and executory.[12] Atty. Funk then filed a *partial motion for execution (the first motion for execution)* with the RTC.[13] During the hearing on the motion, the Foundation paid the attorney's fees in the total amount of **P1,450,501.02**. [14]

The Foundation, however, remitted P167,735.48 to the Bureau of Internal Revenue (BIR) as *withholding taxes*. It likewise withheld the *bill of costs* (filing fees, commissioner's fee, stenographer's fee, and other court fees) in the total amount of **P20,281.00**. [15]

In an order dated **February 16, 2009**, the RTC upheld the remittance of the withholding of taxes, and denied the inclusion of the bill of costs because of Atty. Funk's supposed failure to comply with Section 8, Rule 142 of the Rules of Court. [16]

Interpreting the February 16, 2009 RTC order as a command to directly elevate his case to this Court, Atty. Funk filed with the Second Division an *urgent motion* for the Clerk of Court to include costs in the execution. [17]

On **March 30, 2009**, we denied the *urgent motion* and resolved to expunge it from the record because "the [mother case had] been decided on 06 December 2006 and entry of judgment [had] been made on 14 June 2007 x x x" [18] Atty. Funk moved but failed to obtain a reconsideration of our March 30, 2009 Resolution. [19]

Atty. Funk went back to the RTC and filed an *urgent motion for execution of costs (the second motion for execution)*. The respondents opposed the motion. They argued that the February 16, 2009 RTC order denying the bill of costs and affirming the withholding of taxes had become final since Atty. Funk did not move for its reconsideration nor file an appeal. [20]

THE RTC RULING

On October 23, 2009, the RTC denied Atty. Funk's *second motion for execution*, stating among others that:

Anent the amount withheld by the [respondents] and remitted to the [BIR], the same has been sustained by the BIR itself in its Opinion (dated September 10, 2008) issued per [Atty. Funk's] request. Having obtained an unfavorable ruling, [he] cannot turn [his] back on the same for in doing so, [he] not only defies the said ruling but contradicts [himself] in the process. Thusly, [the respondents] are under no obligation to remit to

[Atty. Funk] the Php 167,735.48 they withheld from the amount owing to [the latter] and remitted to the BIR as this act was upheld by the BIR x x x.

WHEREFORE, premises considered and for lack of merit, the instant Motion for Execution for Costs in the amount of Php 20,281.00 (covering the bill of costs) and Php 167,735.48 (covering the tax withheld and remitted to the BIR) are [sic] denied.

SO ORDERED.^[21]

Atty. Funk moved but failed to secure a reconsideration of the RTC order. Hence, he appealed to the CA.^[22]

THE CA RULING

The CA upheld the denial of the *second motion for execution* and agreed with the RTC that: (1) the February 16, 2009 RTC order denying the inclusion of the bill of costs had become final for Atty. Funk's failure to move for reconsideration or to appeal; (2) in any case, Atty. Funk did not comply with Section 8, Rule 142 of the Rules of Court, *i.e.*, the need to move for the execution of the costs of suit after [sic] five days from the date the judgment had become final and executory; and (3) the BIR's opinion that the Foundation properly withheld P167,735.48 as taxes, is binding on Atty. Funk.^[23]

The CA denied Atty. Funk's motion for reconsideration; thus, the present petition.^[24]

THE PETITION

Atty. Funk posits in his petition that:

First, the CA erred in applying Section 8, Rule 142 of the Rules of Court.^[25]

Citing the 1960 case of *Romulo v. Desalla*,^[26] Atty. Funk points out that the finality of the decision where costs were granted does not bar the execution of the costs "for the payment of [costs], the law prescribes that certain steps be first taken, such as the assessment by the clerk of court, and the appeal, if any, from that assessment to the court, and unless these steps are taken, the judgment as to costs cannot be executed."^[28]

He contends that there is no basis in the RTC and CA's holding that the "costs of suits should be filed after five days when the decision becomes final and executory" and that the Rule only states that "[i]n superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party."^[29]

Second, contrary to the CA ruling, the motions for execution were filed on time.^[30]

Section 6, Rule 39 of the Rules of Court provides that a final and executory judgment or order may be executed on motion within *five years from the date of its entry*.

Atty. Funk explains that the entry of judgment in the mother case was made on June 14, 2007, and that he filed the *first motion for execution* on August 31, 2007, and the *second motion for execution* in October 2009.^[31] Clearly, both motions were filed within the five-year period.

Third, the BIR's opinion that the Foundation properly withheld and remitted the taxes on the attorney's fees is not binding on the courts.^[32]

Atty. Funk posits that his fees should not have been subjected to withholding taxes. Rather, the sum withheld should have been included in his gross income for taxable year 2008. Only after deductions of expenses should the resulting net income, if any, be taxed.^[33] Atty. Funk also criticizes the CA and the RTC's reliance on the BIR opinion without examining its correctness.^[34]

Atty. Funk thus prays that we order the RTC to direct the respondents to pay the costs of suit and refund the amount remitted to the BIR.^[35]

THE RESPONDENTS' COMMENT

The respondents counter that the denial of the bill of costs is correct as Atty. Funk failed to comply with Section 8, Rule 142 of the Rules of Court, *i.e.*, he failed to raise the issue of the bill of costs in a timely manner. They insist that the February 16, 2009 RTC order had become final because of Atty. Funk's failure to move for its reconsideration or to appeal.^[36]

The respondents further contend that Atty. Funk is estopped from questioning the BIR opinion as it was he who sought its issuance. It was only after the BIR opined against his interests did he question the opinion's correctness. In any case, the opinion of the BIR - the agency that has the expertise on taxation — is entitled to great respect.^[37]

ISSUES

The present petition brings to the fore two issues: (1) whether the costs of suit can still be executed; and (2) whether Atty. Funk can recover the amount withheld as taxes.

OUR RULING

We deny the petition.

The Execution of the Costs of Suit

To resolve the first issue, we examine the effects of the February 16, 2009 RTC order that denied the *first motion for execution*.

The respondents point out and *Atty. Funk does not dispute* that he did not move for reconsideration or appeal the February 16, 2009 RTC order. Still, he argues that the order did not become final because the costs of suit may be executed under Section 6, Rule 39 of the Rules of Court. He also cites *Romulo*, which purportedly held that costs may be executed despite the finality of the judgment that awarded the costs. He insists that he could, as **he did**, file with the RTC the *second motion for execution*.

The Denial of the First Motion for Execution

The RTC held that Atty. Funk failed to comply with Section 8, Rule 142 of the Rules of Court, which states:

Section 8. Costs, *how taxed*. — In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment. **In superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party.** With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. **The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution.** ^[38] [emphasis ours]

The RTC ruled that Atty. Funk should have given written notice to the respondents five days *after* the decision became final and executory. Although the RTC used the word *after*, what it meant was that Atty. Funk should have given the written notice *within* five days from the date the judgment became final and executory, *i.e.*, date of its entry.^[39] Hence, the RTC denied the *first motion for execution* filed on August 31, 2007, or more than two months from the date of entry - June 14, 2007 - of our judgment in the mother case. The CA affirmed the RTC ruling *in toto*.

The RTC and the CA incorrectly applied Section 8 of Rule 142.

To execute the costs of suit in superior courts (*i.e.*, courts other than the first level courts), Section 8 of Rule 142 does not require the prevailing party to notify the adverse party within five days from the entry of judgment. *What Section 8 mandates is that the adverse party must be given at least five days written notice before costs may be taxed or assessed.* The obvious purpose of the notice is to give opportunity to the adverse party to object to the costs. The clerk of court will thereafter tax or assess the costs, which assessment may be appealed by either party to the court where execution is sought.

Further, the last sentence of Section 8 of Rule 142 contemplates a scenario where costs *may* be taxed or assessed even, *before* the entry of judgment. This possibility contradicts the RTC and CA's conclusion that notice must be given within five days from the date of entry of judgment.

In reality, to require the prevailing party to move for the execution of costs within