

## SECOND DIVISION

[ G.R. No. 191641, September 02, 2015 ]

**EDMUNDO NAVAREZ, PETITIONER, VS. ATTY. MANUEL ABROGAR  
III, RESPONDENT.**

### 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 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 P220,107.51 - allegedly equivalent to one half of 7.5% of petitioner's P11,200,000.00 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 (1/2) 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 fullblown 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