

## THIRD DIVISION

[ G.R. No. 190994, September 07, 2011 ]

**TONGONAN HOLDINGS AND DEVELOPMENT CORPORATION,  
PETITIONER, VS. ATTY. FRANCISCO ESCAÑO, JR. RESPONDENT.**

### DECISION

**MENDOZA, J.:**

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court filed by Tongonan Holdings and Development Corporation (THDC) assailing, on questions of law, the August 12, 2009 Decision<sup>[1]</sup> of the 19<sup>th</sup> Division of the Court of Appeals, Cebu City (CA), in CA-G.R. SP No. 03935, entitled "*Atty. Francisco Escaño, Jr. v. Hon. Apolinario Buaya, in his capacity as Presiding Judge, Regional Trial Court, Branch 35, Ormoc City and Tongonan Holdings & Development Corporation, represented by its president, Mr. Antonio Diano,*" and its December 10, 2009 Resolution denying the motion for the reconsideration thereof.

#### The Facts

This controversy between petitioner THDC and its erstwhile counsel, respondent Atty. Francisco Escaño, Jr. (*Atty. Escaño*) arose from a case for eminent domain, docketed as Civil Case No. 3392-0 entitled "*Philippine National Oil Company v. Sps. Dominador and Minerva Samson*" before the Regional Trial Court, Branch 35, Ormoc City (RTC). THDC was named as Defendant-Intervenor in the said case, as it had purchased the subject parcels of land from the defendant spouses (*Spouses Samson*) and was represented by Atty. Escaño of the Escaño Montehermoso Oliver and Trias Law Office from February 24, 1997 to June 30, 1999. After the dissolution of the law firm, Atty. Escaño continued to represent THDC from July 1, 1999 until his services was terminated by THDC in April 2005.<sup>[2]</sup>

Eventually, in the RTC Order<sup>[3]</sup> dated November 27, 2000, THDC was awarded just compensation in the amount of ₱33,242,700.00 with legal interest at the rate of 6% per annum from the date of the filing of the complaint on June 10, 1996.

Meanwhile, Atty. Escaño sought the entry of his attorney's liens on the basis of the Memorandum of Agreement (MOA) dated February 24, 1997, contracted between him and THDC, stipulating the 30% professional or attorney's fees. The RTC, in its Order<sup>[4]</sup> dated June 13, 2001, declared the claim of 30% attorney's fees on the judgment as unconscionable. The amount of attorney's fees was then fixed at 15% of the judgment award in the name of the partners. On appeal, this reduction of attorney's fees was affirmed by the CA in its Decision<sup>[5]</sup> dated July 31, 2002.

Upon dismissal of PNOC's appeal in the main case in the CA, Atty. Escaño, representing THDC, moved for the execution of the RTC decision. The RTC then

ordered the issuance of a writ of execution in its Order<sup>[6]</sup> dated March 11, 2005.

Subsequently, Atty. Escaño filed an Urgent Manifestation with Motion<sup>[7]</sup> alleging that THDC had lost its juridical personality as a corporation due to the revocation of its certificate of registration. He prayed that the enforcement of the said writ of execution be held in abeyance until the termination of the NBI's investigation relative to the allegations that the RTC Decision of November 27, 2000 and the dismissal of the appeal were secured through fraud. THDC later furnished the RTC with a copy of a certification from the Securities and Exchange Commission (SEC) that the corporation had not been dissolved. As a result, THDC terminated the services of Atty. Escaño on the ground of loss of confidence, which was approved by the RTC.

Afterward, Atty. Escaño filed a "Motion to Enter Into the Records Attorney's Lien"<sup>[8]</sup> for additional attorney's fees of 15% for his professional services, rendered after the dissolution of their law firm, from July 1, 1999 to April 29, 2005. He also asked for another 33.7% as additional attorney's fees for Atty. Lino Dumas and partners, whom he claimed to be his consultants when the case was on appeal. These amounts were on top of the 15% already finally awarded. In all, he was demanding a total of 63.7% of the judgment award.

The RTC, in its September 26, 2005 Order,<sup>[9]</sup> denied the motion and approved only the 15% Attorney's Lien on the money judgment in favor of Atty. Escaño and his former partners. It held that Atty. Escaño was not entitled to an additional compensation on the ground that when he took over the case from their law firm there was no separate contract for his legal services. The said case became his case after the partners divided all of the firm's cases among themselves; thus, the continuation of his services was still covered by the MOA previously entered between him and THDC. After his motion for reconsideration was denied on January 26, 2006, Atty. Escaño filed a Notice of Appeal.

On April 2, 2007, the RTC gave due course to the Notice of Appeal. The pertinent portion of the order states:

Nevertheless, in order to afford Atty. Escaño of all avenues available to him in pursuing his claim for attorney's liens, despite the fact that the main case has long become final and executory, his appeal is given due course. Despite the granting of the appeal, the execution will still proceed but the money recovered will be held in escrow until the final determination of the attorney's fees.

Let the records of this case be forwarded to the Court of Appeals.

SO ORDERED.<sup>[10]</sup>

THDC then filed its *Motion for Reconsideration and Motion to Dismiss Appeal* arguing that the Notice of Appeal was not the proper remedy as the order being questioned was interlocutory which could not be the subject of an appeal. It also questioned the order to hold the proceeds of the execution in escrow without any motion from the parties.

On June 25, 2007, the RTC issued a Resolution<sup>[11]</sup> granting THDC's motion and setting aside the April 2, 2007 Order. It reasoned out that the issue of attorney's fees was indeed interlocutory considering that it was only incidental to the principal action and that the claim for attorney's fees could be properly raised in another forum so as not to prejudice the main case. Atty. Escaño moved for a reconsideration of the said resolution but it was denied in an Order dated November 19, 2008.

Aggrieved, Atty. Escaño filed a Petition for Certiorari under Rule 65 with the CA assailing both the June 25, 2007 Resolution and November 19, 2008 Order of the RTC. His petition included a prayer to put in escrow all the proceeds of the money judgment in Civil Case No. 3392-0.

On August 12, 2009, the CA ruled that the RTC acted with grave abuse of discretion in denying the appeal. The CA concluded that giving due course to Atty. Escaño's Notice of Appeal and putting in escrow the money judgment was proper and appropriate as there was still a need to determine the issue of attorney's fees. The dispositive portion of the assailed CA Decision reads:

**WHEREFORE**, the petition is **GRANTED**. The orders of respondent court dated June 25, 2007 and November 19, 2008, denying petitioner's *Notice of Appeal* is **SET ASIDE**. The *Order* of the public respondent dated April 2, 2007 is **REVIVED** and is **DECLARED** immediately **EXECUTORY**.

Accordingly, petitioner's *Notice of Appeal* is given due course and respondent court is **DIRECTED** to transmit the records of Civil Case No. 3392-0 to this Court for review on appeal of the Orders dated September 26, 2005 and January 26, 2006 regarding the issue of petitioner's attorney's fees.

Further, public respondent is directed to put in escrow account at the local branch of the Land Bank of the Philippines the proceeds of the judgment in Civil Case No. 3392-0 not subject to existing liens, until the issues as to petitioner's attorney's fees on the basis [of] *quantum meruit* is finally resolved and until the identity of the person or persons duly authorized to receive the proceeds of the judgment in Civil Case 3392-0 are clearly established on appeal.

**SO ORDERED.**<sup>[12]</sup>

THDC filed a motion for reconsideration of the above decision but the CA denied the same in its Resolution<sup>[13]</sup> dated December 10, 2009. Hence, on February 19, 2010, THDC interposed the present petition before this Court anchored on the following

## **GROUND**

### **(1)**

**THE CA ERRONEOUSLY BASED ITS DECISION ON THE PRESUMPTION THAT THE APPEAL OF ATTY. ESCAÑO WAS PROPERLY LODGED**

**(2)**

**THE CA MISINTERPRETED AND MISAPPLIED THE MEANING OF "INTERLOCUTORY ORDER"**

**(3)**

**AN INTERLOCUTORY ORDER CANNOT BE APPEALED**

**(4)**

**THE CA ERRONEOUSLY RULED ON AN ISSUE THAT IT DID NOT RECOGNIZE**

**(5)**

**THE CA ERRONEOUSLY RULED ON A CAUSE OF ACTION THAT IS NOT WITHIN ITS ORIGINAL AND EXCLUSIVE JURISDICTION**

**(6)**

**THE CA ERRONEOUSLY RULED THAT THE ORDER OF THE RTC OF APRIL 2, 2007 WAS REVIVED AND FURTHER DECLARED IT TO BE IMMEDIATELY EXECUTORY**

**(7)**

**DEPRIVATION OF THE PETITIONER'S RIGHT TO DUE PROCESS.**<sup>[14]</sup>

It appears from the records that on September 6, 2010, the judgment in Civil Case No. 3392-0 was duly satisfied with the full payment by PNOC of the judgment obligation. On September 22, 2010, Atty. Escañó filed before this Court an Urgent Manifestation alleging certain irregular acts of the RTC pertaining to the money judgment deposited in its fiduciary fund.

Likewise, he filed a Supplemental Manifestation with Urgent Motion for Issuance of a Cease and Desist Order dated October 4, 2010 stating that an Order dated October 1, 2010 was issued by the RTC directing the release to THDC of ₱45,454,683.68 out of the ₱53,476,098.45 proceeds of the judgment in Civil Case No. 3392-0 which was ordered to be put in escrow account. Acting on the said manifestations, this Court, in a Resolution dated October 6, 2010, issued a Temporary Restraining Order enjoining THDC and the RTC from implementing and enforcing the Order of October 1, 2010.

On the main issue, the Court finds the petition impressed with merit.

At the outset, Atty. Escaño alleges that the petition failed to comply with Rule 45 as it did not distinctly set forth the questions of law THDC raised before this Court, and that the seven (7) grounds raised by THDC involved questions of facts, rather than of law, which are not proper in a petition for review under Rule 45. He likewise alleges that the petition did not include clearly legible duplicate original or certified true copies of the material documents of CA-GR SP No. 03935.

In *Republic of the Philippines v. Malabanan*,<sup>[15]</sup> this Court distinguished a question of law from a question of fact. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.<sup>[16]</sup>

A perusal of the present petition shows that the issues raised by THDC are questions of law, as the same can be resolved solely on what the law provides under the undisputed facts. The issues are the correct appreciation of Atty. Escaño's appeal, the exact meaning, interpretation and application of "interlocutory order;" the rule that an interlocutory order cannot be appealed; the legality of the CA decision on the issue of escrow; whether the CA can make a determination of an issue that it did not recognize; the legality of the CA decision on the issue of attorney's fees when there is no pending case yet on the matter; the CA's declaration in the questioned decision that the RTC Order dated April 2, 2007 is revived and immediately executory; and the question of denial of due process. All of these, indeed, are questions of law. Thus, Atty. Escaño's argument that the grounds thereof are factual is misleading.

On the issue of whether the RTC's order of denial of the motion for entry for additional attorney's fees was interlocutory or final, THDC contends that it was merely interlocutory because the issue was only collateral to the main issue of eminent domain. It submits that the main action of eminent domain could exist independently without the issue of attorney's fees. The RTC decision of November 27, 2000 did not even mention the award of attorney's fees. According to THDC, the matter of attorney's fees arose only when Atty. Escaño requested that his attorney's liens be entered into the records of the case. Thus, it insists that the orders relative to the issue of attorney's fees being interlocutory, the same cannot be the subject of appeal in accordance with the provision of Section 1(c), Rule 41 of the Revised Rules of Court.

Atty. Escaño, on the other hand, counters that the Orders of September 26, 2005 and January 26, 2006 are not interlocutory, but final orders and, therefore, appealable, as correctly ruled by the CA. He reasons that both orders finally disposed the issue of his attorney's fees before the RTC and there was nothing more to be done pertaining to the same matter.