

SECOND DIVISION

[G.R. No. 121772, January 13, 2003]

**ELNORA R. CORTES AND EDMUNDO CORTES, PETITIONERS, VS.
COURT OF APPEALS, F. S. MANAGEMENT & DEVELOPMENT CORP.
AND FELIX MOYA, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to set aside the Decision of the Court of Appeals dated March 17, 1995^[1], the dispositive portion of which reads:

"WHEREFORE, premises considered, the appealed Order dated July 16, 1992 is hereby AFFIRMED with modification. Appellants spouses Cortes in addition to the P100,000.00 is further ORDERED to pay six percent (6%) per annum legal interest of such amount from July 25, 1992 until fully paid.

"Cost against appellants spouses Cortes.

"SO ORDERED."^[2]

The controversy stemmed from a civil case for specific performance with damages filed by F.S. Management and Development Corporation (FSMDC) against spouses Edmundo and Elnora Cortes involving the sale of the parcel of land owned by the said spouses.^[3]

Spouses Cortes retained the professional services of Atty. Felix Moya for the purpose of representing them in said case. However, they did not agree on the amount of compensation for the services to be rendered by Atty. Moya.

Before a full-blown trial could be had, defendants spouses Cortes and plaintiff FSMDC decided to enter into a compromise agreement. On June 4, 1991, defendants spouses received from plaintiff FSMDC, three checks totaling P2,754,340.00 which represents the remaining balance of the purchase price of the subject land.

On June 7, 1991, Atty. Moya filed an "Urgent Motion to Fix Attorney's Fees, Etc." praying that he be paid a sum equivalent to thirty-five percent (35%) of the amount received by the defendants spouses^[4] which the latter opposed contending that the amount Atty. Moya seeks to recover is utterly excessive and is not commensurate to the nature, extent and quality of the services he had rendered.^[5]

On July 2, 1991, the Cortes spouses and Atty. Moya settled their differences by

agreeing in open court that the former will pay the latter the amount of P100,000.00 as his attorney's fees. Pursuant to such agreement, the trial court issued an order of even date which reads as follows:

"Parties in open Court agreed to movant's attorney's fees of P100,000.00 to be paid out of any check paid by the plaintiff to defendants.

"Not later than July 15, 1991, parties are hereby ordered to inform the Court whether or not this is complied with, so the Court can act accordingly. (*Emphasis supplied*)

"SO ORDERED."^[6]

Subsequently, the Cortes spouses terminated the services of Atty. Moya and retained the services of another lawyer.

On January 8, 1992, or about six months after the afore-quoted Order, Atty. Moya filed an Ex-Parte Manifestation praying that his Motion to Fix Attorney's Fees be resolved on the basis of the agreement of the parties "in chambers".^[7]

The Cortes spouses filed their Comment claiming:

"1. That they agreed to the settlement of P100,000.00 attorney's fees expecting that the checks paid by plaintiff by way of settlement will be good and may be encashed by them but it turned out that they were all dishonored, and no compromise agreement was pushed through;

"2. That defendants are willing to pay Atty. Moya as additional compensation for his services only in the amount of P50,000.00 subject to the condition that same shall be paid after the case is terminated in their favor and/or the property involved is sold;

"3. That defendants shall compensate Atty. Moya said amount in addition to what they have paid before."^[8]

On June 26, 1992, Atty. Moya filed a "Motion for Early Resolution of Pending Incidents and to Order Defendants to Pay Their Previous Counsel".^[9]

On July 16, 1992, the trial court issued an Order directing the Cortes spouses to pay Atty. Moya the sum of P100,000.00 as and by way of attorney's fees.^[10] The Cortes spouses filed a Notice of Appeal to the Court of Appeals.^[11] On July 31, 1992, Atty. Moya filed an "Ex-Parte Motion to Dismiss Defendant's Appeal" which was denied by the trial court in its Order dated August 4, 1992.^[12] Consequently, he filed a notice of appeal questioning the Orders of the trial court dated July 16, 1992 and August 4, 1992.^[13]

On March 17, 1995, the Court of Appeals rendered the herein assailed decision resolving the respective appeals of spouses Cortes and Atty. Moya in favor of the latter.^[14] Spouses Cortes moved for the reconsideration of the decision of the appellate court which the Court denied in its Resolution issued on August 30, 1995.^[15]

Hence, herein petition filed by the Cortes spouses, raising the following issues:

"1. Whether the award of P100,000.00 in favor of private respondent as and by way of attorney's [fees] for the handling of petitioners' case before the services of the former was legally terminated is tenable under the facts of this case.

"2 Whether the respondent Honorable Court of Appeals misapplied the principle of Estoppel in this case."^[16]

As both issues are interrelated, we shall resolve them jointly.

Petitioners spouses claim that they have already paid private respondent Moya the total amount of P36,000.00 in acceptance and appearance fees.^[17] However, a perusal of the records shows that no competent evidence, oral or documentary, was presented to prove said claim. It is settled that he who alleges a fact has the burden of proving it; that mere allegation is not evidence.^[18] Besides, records show that the alleged payment by petitioners of said amount was never raised before the lower court. It was only raised on appeal with respondent appellate court. Settled is the rule that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice.^[19]

Nevertheless, petitioners' main contention is that the award of P100,000.00 to private respondent Moya as and by way of attorney's fees "is unconscionable and unreasonable."

On its face, the Order dated July 2, 1991 appears to be explicit and leaves no room for any other interpretation. The first paragraph of said Order states that parties in open Court agreed that the attorney's fees in the amount of P100,000.00 shall be paid out of **any check** paid by the plaintiff to defendants.^[20] The said agreement is therefore in the nature of a compromise agreement.

However, petitioners contend that they agreed to pay private respondent P100,000.00 out of the three (3) checks paid by FSMDC on June 4, 1991 and not out of any other check issued by FSMDC. This contention finds support in the prayer of private respondent, Atty. Moya himself, in his Urgent Motion to Fix Attorney's Fees, Etc." explicitly asking that he "be paid immediately upon the encashment of the P1,000,000.00 check dated June 10, 1991 by the defendants". He even expressed concern that he "may not be paid the corresponding attorney's fees out of the check that is due for payment on said date". ^[21] Clearly therefrom, the amount of P100,000.00 due to Atty. Moya was expected to be taken **not from any check** paid by FSMDC to petitioners but specifically from the check dated June 10, 1991 given to petitioners spouses.

As already stated, the Order in question appears to be a compromise agreement between spouses Cortes and Atty. Moya. It is true that under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

^[22] A party may not go back on his own acts and representations to the prejudice of the other party who relied upon them.^[23] But, in technical estoppel, the party to be

estopped must knowingly have acted so as to mislead his adversary, and the adversary must have placed reliance on the action and acted as he would otherwise not have done.^[24]

In the present case, petitioners had evidently agreed to pay private respondent P100,000.00 **out of the checks paid by FSMDC on June 4, 1991**. However, the trial court ordered the payment to be sourced **out of any check** paid by FSMDC to petitioners. Yet, it does not appear from the original records that both the petitioners and the private respondent were actually sent copies of the Order of July 2, 1991. Thus, petitioners spouses were deprived of the opportunity to question the content of the Order on ground of mistake or excusable negligence, pursuant to the remedy provided for under Section 1, Rule 38 of the Rules of Court. Since petitioners did not receive a copy of the said Order they could not therefore be considered as having knowingly agreed to it as to mislead the court or the private respondent into believing that they unconditionally acceded to pay private respondent the amount of P100,000.00 out of any check given by FSMDC. Consequently, they are not estopped from questioning the correctness of such Order. Elementary fairness dictates that petitioners, who were unaware of the questioned Order, should not be estopped from questioning the same.

Having disposed of the issue on estoppel, we now turn to the question of whether or not the amount of P100,000.00 awarded to the private respondent is in consonance with the prevailing principles and guidelines governing compensation due to attorneys for the professional services they have rendered.

The reasonableness of the amount of attorney's fees awarded to private respondent should be properly gauged on the basis of the long-standing rule of *quantum meruit*, meaning, "as much as he deserves". Where a lawyer is employed without agreement as to the amount to be paid for his services, the courts shall fix the amount on *quantum meruit* basis. In such a case, he would be entitled to receive what he merits for his services.^[25] In this respect, Section 24, Rule 138 of the Rules of Court provides:

"Sec. 24. Compensation of attorneys, agreement as to fees. - 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. x x x"

In addition, the following circumstances, codified in Rule 20.1, Canon 20 of the Code of Professional Responsibility, serves as a guideline in fixing a reasonable compensation for services rendered by a lawyer on the basis of *quantum meruit*:

- "a) The time spent and the extent of the services rendered or required;
- "b) The novelty and difficulty of the questions involved;
- "c) The importance of the subject matter;
- "d) The skill demanded;
- "e) The probability of losing other employment as a result of acceptance