

DIONISIO C. REQUIO, COMPLAINANT, VS. WILLIAM DY-LIACCO, RESPONDENT.*A.C. No. 1601. January 31, 1977*

Ponente: AQUINO, J.

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Attorney William E. Dy-Liacco (admitted to the bar in 1939) was the counsel of Dionisio C. Requio and Antonio Romano in Civil Case No. 5624 of the Court of First Instance of Camarines Sur, Naga City branch entitled "Felipe Gonowon versus Dionisio Requio and Antonio Romano".

That damage suit was filed in June, 1963. Gonowon prayed that Requio and Romano be ordered to pay solidarily to him damages amounting to P10,000 which were allegedly suffered by him when his bus was bumped by defendants' bus.

As to the substantial legal services rendered by Atty. Dy-Liacco, the record shows that he filed an answer dated July 1, 1963 and a manifestation dated September 16, 1965 as to defendants' admissions. He appeared at eleven hearings, to wit: July 20, and September 8, 1966, May 12, 1967, February 29, May 2, July 26 and October 3, 1968, and February 14 and 19, June 26 and October 2, 1969. Eight witnesses testified. More than thirty exhibits were offered in evidence.

Atty. Dy-Liacco said that, for those legal services, he received from Requio as compensation the sum of P385, itemized as follows:

Date and Receipt No.	Amount Paid
June, 1963, Receipt No. 75	----- P 50.00
December, 1963, Receipt No. 191	----- 50.00
January, 1964, Receipt No. 5	----- 20.00
February, 1964, Receipt No. 39	----- 40.00
May, 1965, Receipt No. 80	----- 100.00
August, 1965, Receipt No. 126	----- 50.00
March, 1966, Receipt No. 50	----- 50.00
May, 1968, Receipt No. 69	----- 25.00

He said that Requio had agreed to pay him P500 for handling the case in the trial court and that Requio owed him P115 as the unpaid balance of the stipulated attorney's fees.

The trial court in its decision dated April 20, 1970 ordered Requio and Romano to pay solidarily to Gonowon damages amounting to P5,920. (Requio had "attached his bus operation to Romano's franchise"). It found that

Requio's bus, after having had a tire blowout, bumped Gonowon's bus, which had stopped to unload passengers. The lower court found Requio's tire to be "quite old and unreliable". It characterized the accident as an allision, not a collision.

In Requio's behalf, Atty. Dy-Liacco perfected an appeal to the Court of Appeals from that decision. The appeal was dismissed in that Court's resolution of February 27, 1973 because Atty. Dy-Liacco did not file any brief. He explained that he did not file any brief because Requio decided not to "proceed with the appeal on account of financial reverses and difficulties due to his illness and that of his wife".

In a letter dated July 5, 1973 Atty. Dy-Liacco apprised Requio of the dismissal of the appeal and the fact that the lower court's judgment had become final. He warned Requio: "We can therefore expect that the next move of plaintiff is to ask for the execution of the lower court's decision."

Two years and five months after receiving that letter, or on December 8, 1975, Requio filed a complaint charging Atty. Dy-Liacco with "serious misconduct and negligence".

The issue is whether under the pleadings herein Requio has shown a prima facie case against Atty. Dy-Liacco that would warrant a full-dress investigation of his charges.

The gravamen of Requio's complaint is that he allegedly paid to the respondent the total sum of P1,885 "for expenses in the appeal of his case" and that, notwithstanding such payment, the respondent did not file any appellant's brief. Requio has no receipts to substantiate that allegation.

When he was required to produce documentary evidence proving his alleged payment of P1,885 to the respondent, he alibied that the receipts, together with other papers, were left in a taxicab which he and his wife took upon arrival at the Paco railroad station on February 9, 1976 and that his efforts to locate the taxicab were fruitless.

On the other hand, respondent's version is that, as already indicated, for his services in the trial court, Requio paid him only P385 out of the stipulated fee of P500; that he (respondent) advanced the sum of P120 as appeal bond and has never been reimbursed of that amount; that Requio abandoned the appeal because he had no money to defray the expenses for prosecuting it, including respondent's attorney's fees (par. 6, Supplemental Rejoinder, p. 34, Rollo); that another factor which caused Requio to lose interest in the appeal was that he had received from the insurer P3,500, and that Requio told the respondent that, even if the decision against him were to be executed, the judgment creditor would not get anything because he (Requio) had no real properties declared in his name.

We have carefully weighed the conflicting contentions of the parties. Our conclusion is that Requio has not shown in his pleadings any compelling justification for requiring respondent lawyer to undergo the rigors of an investigation.

Requio's allegation that he paid to the respondent the total sum of P1,885 (P1,000 for the prosecution of the appeal) and that the receipts were lost, when the baggage where they were contained, was left in a taxicab on February 9, 1976, is not credible. Loss of papers, because they were left in a motor vehicle, is a common subterfuge. He could have attached copies of the receipts to the complaint. He did not do so although the receipts were the bases of his complaint.

According to Requio's explanation of October 6, 1976, the receipts were lost when he and his wife boarded a taxicab. That allegation is inconsistent with his wife's affidavit, attached to the same explanation, that the baggage containing the receipts was lost when she and her son, Rodrigo, and her compadre, Lucio Estares, boarded a taxicab at the Paco railroad station. Requio, the husband, is not mentioned in that affidavit.

Requio does not dispute respondent's allegation that he (Requio) was the one who paid directly to the Court of Appeals the docket fee of P53 on July 26, 1972 as shown in Official Receipt No. 98442259. The respondent had wired Requio on July 25, 1972 that the docket fee should be paid on or before July 27, 1972.

If, according to Requio, he paid to the respondent P1,000 to cover the expenses of the appeal, then it would not have been necessary for the respondent to ask him to remit P53 for the docket fee nor for Requio to pay that amount to the Court of Appeals. But, as above noted, Requio paid the docket fee. That payment signifies that he never gave any amount to the respondent, much less the sum of P1,000, to defray the expenses of the appeal.

Moreover, the lathes of Requio and the other inconsistencies in his averments show that his complaint is devoid of merit.

Requio admits that in July, 1973 the respondent wrote to him that the appeal was dismissed, that the lower court's judgment had become final, and that execution would follow that dismissal.

Yet, in spite of that admission, he alleged in his complaint that he came to know of the dismissal only in October, 1974, when he conferred with the respondent. And in that same complaint, he alleged that he came to know of the dismissal on December 4, 1975 when he was shown in the Court of Appeals the resolution dismissing his appeal.

It is manifest that Requio's complaint herein contains inconsistencies which are inconsistent with his admission that he came to know of the dismissal in July, 1973 when he received respondent's letter apprising him that his appeal was dismissed.

We are convinced that no malice or inexcusable neglect can be imputed to the respondent in not filing the brief and that Requio, who was unable to pay respondent's fees and the expenses for printing the brief, abandoned his appeal. (Compare with *Heredia vs. Salinas*, 10 Phil. 157 where a lawyer who did not seasonably appeal the adverse decision against his client was absolved from the client's suit for damages, and *Ventanilla vs. Centeno*, 110 Phil. 811 where a lawyer who failed to appeal was adjudged liable to pay P200 as damages to his client).

WHEREFORE, the complaint against respondent Dy-Liacco is dismissed.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

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