

**BLANDINA GAMBOA HILADO, PETITIONER, VS. JOSE GUTIERREZ DAVID, VICENTE J. FRANCISCO, JACOB ASSAD AND SELIM JACOB ASSAD, RESPONDENTS.**

*G.R. No. L-961. September 21, 1949*

Ponente: TUASON, J.

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**TUASON, J.:**

It appears that on April 23, 1945, Blandina Gamboa Hilado brought an action against Sails Jacob Assad to annul the sale of several houses and lot executed during the Japanese occupation by Mrs. Hilado's now deceased husband.

On May 14, Attorneys Ohnick, Velilla & Balonkita filed an answer on behalf of the defendant; and on June 15, Attorneys Delgado, Dizon, Florea & Rodrigo registered their appearance as counsel for the plaintiff.

On October 5, these attorneys filed an amended complaint by including Jacob Assad as party defendant.

On January 28, 1946, Attorney Francisco entered his appearance as attorney of record for the defendants in substitution for Attorneys Onnick, Velilla & Balonkita who had withdrawn from the case.

On May 29, Attorney Dizon, in the name of his firm, wrote Attorney Francisco urging him to discontinue representing the defendants on the ground that their client had consulted with him about her case, on which occasion, it was alleged, "she turned over the papers" to Attorney Francisco, and the latter sent her a written opinion. Not receiving any answer to this suggestion, Attorneys Delgado, Dizon, Flores & Rodrigo on June 3, 1946, filed a formal motion with the court, wherein the case was and is pending, to disqualify Attorney Francisco.

Attorney Francisco's letter to plaintiff, mentioned above and identified as Exhibit "A", is in full as follows:

"VICENTE J. FRANCISCO "Attorney-at-Law 1462 Estrada, Manila

"July 13, 1945

"Mrs. Blandina Gamboa Hilado

"Manila, Philippines

"My dear Mrs. Hilados

"From the papers you submitted to me in connection with Civil Case No. 70075 of the Court of First Instance of Manila, entitled "Blandina Gamboa Hilado v. S. J. Asaad," I find that the basic facts which brought about the controversy between you and the defendant therein are as follows:

"(a) That you were the equitable owner of the property described in the complaint, as the same was purchased and/or built with funds exclusively belonging to you, that is to say, the houses and lot pertained to your paraphernal estate;

"(b) That on May 3, 1943, the legal title to the property was with your husband, Mr. Serafin P. Hilado; and

"(c) That the property was sold by Mr. Hilado without your knowledge on the aforesaid date of May 3, 1943.

"Upon the foregoing facts, I am of the opinion that your action against Mr. Assad will not ordinarily prosper. Mr. Assad had the right to presume that your husband had the legal right to dispose of the property as the Transfer Certificate of Title was in his name. Moreover, the price of Php.110,000.00 in Japanese military notes, as of May 3, 1943, does not quite strike me as so grossly inadequate as to warrant the annulment of the sale. I believe, lastly, that the transaction cannot be avoided merely because it was made during the Japanese occupation, nor on the simple allegation that the real purchaser was not a citizen of the Philippines. On this last point, furthermore, I expect that you will have great difficulty in proving that the real purchaser was other than Mr. Assad, considering that death has already sealed your husband's lips and he cannot now testify as to the circumstances of the sale.

"For the foregoing reasons, I regret to advise you that I cannot appear in the proceedings in your behalf. The records of the case you loaned to me are herewith returned.

"Yours very truly,

(SGD) "VICENTE J. FRANCISCO

"VJF/Rag.

In his answer to plaintiff's attorneys' complaint, Attorney Francisco alleged that about May, 1945 a real estate broker came to his office in connection with the legal separation of a woman who had been deserted by her husband, and also told him (Francisco) that there was a pending suit brought by Mrs. Hilado against a certain Syrian to annul the sale of a real estate which the deceased Serafin Hilado had made to the Syrian during the Japanese occupation; that this woman asked him if he was willing to accept the case if the Syrian should give it to him; that he told the woman that the sales of real property during the Japanese regime were valid even though it was paid for in Japanese military notes; that this being his opinion, he told his visitor he would have no objection to defending the Syrian:

That one month afterward, Mrs. Hilado came to see him about a suit she had instituted against a certain Syrian to annul the conveyance of a real estate which her husband had made; that according to her the case was in the hands of Attorneys Delgado & Dizon, but she wanted to take it away from them; that as he had known the plaintiff's deceased husband he did not hesitate to tell her frankly that hers was a lost case for the same reason he had told the broker; that Mrs. Hilado retorted that the basis of her action was not that the money paid her husband was Japanese military notes but, that the premises were her private and exclusive property; that she requested him to read the complaint to be convinced that this was the theory of her suit; that he then asked Mrs. Hilado if there was a Torrens title to the property and she answered yes, in the name of her husband that he told Mrs. Hilado that if the property was registered in her husband's favor, her case would not prosper either;

That some days afterward, upon arrival at his law office on Estrada street, he was informed by Attorney Federico Agrava, his assistant, that Mrs. Hilado had dropped in looking for him and that when he, Agrava, learned that Mrs. Hilado's visit concerned legal matters he attended to her and requested her to leave the "expediente" which she was carrying, and she did; that he told Attorney Agrava that the firm should not handle Mrs. Hilado's case and he should return the papers, calling Agrava's attention to what he, Francisco, already had said to Mrs. Hilado;

That several days later, the stenographer in his law office, Teofilo Ragodon, showed him a letter which had been dictated in English by Mr. Agrava, returning the "expediente" to Mrs. Hilado that Ragodon told him (Attorney Francisco) upon Attorney Agrava's request that Agrava thought it more proper to explain to Mrs. Hilado the reasons why her case was rejected; that he forthwith signed the letter without reading it and without keeping it for a minute in his possession; that he never saw Mrs. Hilado since their last meeting until she talked to him at the

Manila Hotel about a proposed extrajudicial settlement of the case;

That in January, 1946, Assad was in his office to request him to handle his case stating that his American lawyer had gone to the States and left the case in the hands of other attorneys; that he accepted the retainer and on January 28, 1946 entered his appearance. Attorney Francisco filed an affidavit of stenographer Ragodon in corroboration of his answer.

The Judge trying the case, Honorable Jose Gutierrez David, later promoted to the Court of Appeals, dismissed the complaint. His Honor believed that no information other than that already alleged in plaintiff's complaint in the main cause was conveyed to Attorney Francisco, and concluded that the intercourse between the plaintiff and the respondent did not attain the point of creating the relation of attorney and client.

Stripped of disputed details and collateral matters, this much is undoubted: That Attorney Francisco's law firm mailed to the plaintiff a written opinion over his signature on the merits of her case; that this opinion was reached on the basis of papers she had submitted at his office; that Mrs. Hilado's purpose in submitting these papers was to secure Attorney Francisco's professional services. Branting the facts to be no more than these, we agree with petitioner's counsel that the relation of attorney and client between Attorney Francisco and Mrs. Hilado ensued. The following rules accord with the ethics of the legal profession and meet with our approvals:

"In order to constitute the relation (of attorney and client) a professional one and not merely one of principal and agent, the attorneys must be employed either to give advice upon a legal point, to prosecute or defend an action in court of justice, or to prepare and draft, in legal form such papers as deeds, bills, contracts and the like." (Atkinson vs. Howlett, 11 Ky. Law Rep. (abstract) 364; cited in Vol. 88, A.L.R. p. 6).

"To constitute professional employment it is not essential that the client should have employed the attorney professionally on any previous occasion xxx. It is not necessary that any retainer should have been paid, promised, or charged for; Neither is it material that the attorney consulted did not afterward undertake the case about which the consultation was had. If a person, in respect to his business affairs or troubles of any kind, consults with his attorney in his professional capacity with the view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces in such consultation, then the professional employment must be regarded as established x x x." (5 Jones Commentaries on Evidence, pp.4118-4119.)

"An attorney is employed that is, he is engaged in his professional capacity as a lawyer or counselor when he is listening to his client's preliminary statement of his case, or when he is giving advice thereon, Just as truly as when he is drawing his client's pleadings, or advocating his client's cause in open court." (Denver Tramway Co. vs. Owens, 20 Colo. 107, 36 P. 848.)

"Formality is not an essential element of the employment of an attorney. The contract may be express or implied and it is sufficient that the advice and assistance of the attorney is sought and received, in matters pertinent to his profession. An acceptance of the relation is implied on the part of the attorney from his acting in behalf of his client in pursuance of a request by the latter." (7 C.J.S. 848-849; see *Hirach Bros. & Co. v. R. E. Kennington Co.* 88 A.L.R. 1)

Section 26 (e), Rule 123 of the Rules of Court provides that "an attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment;" and Section 19 (e) of Rule 127 imposes upon an attorney the duty "to maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client." There is no law or provision in the Rules of Court prohibiting attorneys in express terms from acting on behalf of both parties to a controversy whose interests are opposed to each other, but such prohibition is necessarily implied in the injunctions above quoted. (In re De la Rosa, 27 Phil. 258.) In fact the prohibition derives validity from sources higher than written laws and rules. As has been aptly said in *In re Marron*, 22 N. M. 252, L.R.A. 1917B, 378,

"information so received is sacred to the employment to which it pertains," and "to permit it to be used in the interest of another, or, worse still, in the interest of the adverse party, is to strike at the element of confidence which lies at the basis of, and affords the essential security in, the relation of attorney and client."

That only copies of pleadings already filed in court were furnished to Attorney Agrava and that, this being so, no secret communication was transmitted to him by the plaintiff, would not vary the situation even if we should discard Hrs. Hilado's statement that other papers, personal and private in character, were turned in by her. Precedents are at hand to support the doctrine that the mere relation of attorney and client ought to preclude the attorney from accepting the opposite party's retainer in the same litigation regardless of what information was received by him from his first client.

"The principle which forbids an attorney who has been engaged to represent a client from thereafter appearing on behalf of the client's opponent applies equally even though during the continuance of the employment nothing of a confidential nature was revealed to the attorney by the client." (Christian v. Waiialua Agricultural Co., 30 Hawaii 533, Footnote 7, C. J. S. 828.)

"Where it appeared that an attorney, representing one party in litigation, had formerly represented the adverse party with respect to the same matter involved in the litigation, the court need not inquire as to how much knowledge the attorney acquired from his former client during that relationship, before refusing to permit the attorney to represent the adverse party." (Brown v. Miller, 52 App. D. C. 330, 286F. 994.)

"In order that a court may prevent an attorney from appearing against a former client, it is unnecessary that the court ascertain in detail the extent to which the former client's affairs might have a bearing on the matters involved in the subsequent litigation on the attorney's knowledge thereof." (Boyd v. Second Judicial Dist. Court, 274 P. 7, 51 Nev. 264.)

"This rule has been so strictly enforced that it has been held that an attorney, on terminating his employment, cannot thereafter act as counsel against his client in the same general matter, even though, while acting for his former client, he acquired no knowledge which could operate to his client's disadvantage in the subsequent adverse employment." (Pierce v. Palmer (1910) 31 R.I. 432; 77 Atl. 201, Ann. Cas. 1912S, 181.)

Communications between attorney and client are, in a great number of litigations, a complicated affair, consisting of entangled relevant and irrelevant, secret and well known facts. In the complexity of what is said in the course of the dealings between an attorney and a client, inquiry of the nature suggested would lead to the revelation, in advance of the trial, of other matters that might only further prejudice the complainant's cause. And the theory would a productive of other unsalutary results. To make the passing of confidential communication a condition precedent; i.e. make the employment conditioned on the scope and character of the knowledge acquired by an attorney in determining his right to change sides,, would not enhance the freedom of litigants, which is to be sedulously fostered, to consult with lawyers upon what they believe are their rights in litigation. The condition would of necessity call for an investigation of what information the attorney has received and in what way it is or it is not in conflict with his new position. Litigants would in consequence be wary in going to an attorney, lest by an unfortunate turn of the proceeding, if an investigation be held, the court should accept the attorney's inaccurate version of the facts that came to him. "Now the abstinence from seeking legal advice in a good cause is by hypothesis an evil which is fatal to the administration of justice." (John H. Wigmore's Evidence, 1923, Section 2285, 2290, 2291.)

Hence the necessity of setting down the existence of the bare relationship of attorney and client as the yardstick for testing incompatibility of interests. This stern rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to protect the honest lawyer from unfounded suspicion of unprofessional practice. (Strong v. Int. Bldg., etc., Ass'n, 183 111. 97, 47 L.R.A. 792.) It is founded on principles of public

policy, on good taste. As has been said in another case, the question is not necessarily one of the rights of the parties, but as to whether the attorney has adhered to proper professional standard. With these thoughts in mind, it behooves attorneys, like Ceasar's wife, not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing. Only thus can litigants be encouraged to entrust their secrets to their attorneys which is of paramount importance in the administration of Justice.

So without impugning respondent's good faith, we nevertheless can not sanction his taking up the cause of the adversary of the party who had sought and obtained legal advice from his firm; this, not necessarily to prevent any injustice to the plaintiff but to keep above reproach the honor and integrity of the courts and of the bar. Without condemning the respondent's conduct as dishonest, corrupt, or fraudulent, we do believe that upon the admitted facts it is highly inexpedient. It had the tendency to bring the profession, of which he is a distinguished member, "into public disrepute and suspicion and undermine the integrity of justice."

There is in legal practice what is called "retaining fee," the purpose of which stems from the realization that the attorney is disabled from acting as counsel for the other side after he has given professional advice to the opposite party, even if he should decline to perform the contemplated services on behalf of the latter. It is to prevent hardship on the attorney resulting from the rigid observance of the rule that a separate and independent fee for consultation and advice was conceived and authorized. "A retaining fee is a preliminary fee given to an attorney or counsel to insure and secure his future services, and induce him to act for the client. It is intended to remunerate counsel for being deprived, by being retained by one party, of the opportunity of rendering services to the other and of receiving pay from him, and the payment of such fee, in the absence of an express understanding to the contrary, is neither made nor received in payment of the services contemplated j its payment has no relation to the obligation of the client to pay his attorney for the services which he has retained him to perform." (7 C.J.S. 1019.)

The defense that Attorney Agrava wrote the letter Exhibit "A" and that Attorney Francisco did not take the trouble of reading it, would not take the case out of the interdiction. If this letter was written under the circumstances explained by Attorney Francisco and he was unaware of its contents, the fact remains that his firm did give Mrs. Hilado a formal professional advice from which, as heretofore demonstrated, emerged the relation of attorney and client. This letter binds and stops him in the same manner and to the same degree as if he personally had written it. An Information obtained from a client by a member or assistant of a law firm is information imparted to the firm. (6 C.J. 628; 7 C.J.S. 986.) This is not a mere fiction or an arbitrary rule; for such member or assistant, as in our case, not only acts in the name and interest of the firm, but his information, by the nature of his connection with the firm is available to his associates or employers. The rule is all the more to be adhered to where, as in the present instance, the opinion was actually signed by the head of the firm and carries his initials intended to convey the impression that it was dictated by him personally. No progress could be hoped for in "the public policy that the client in consulting his legal adviser ought to be free from apprehension of disclosure of his confidence," if the prohibition were not extended to the attorney's partners, employers or assistants.

The fact that petitioner did not object until after four months had passed from the date Attorney Francisco first appeared for the" defendants does not operate as a waiver of her right to ask for his disqualification. In one case, objection to the appearance of an attorney was allowed even on appeal as a ground for reversal of the judgment. In that case, in which throughout the conduct of the cause in the court below the attorney had been suffered so to act without objection, the court said. "We are all of the one mind, that the right of the appellee to make his objection has not lapsed by reason of failure to make it sooner; that professional confidence once reposed can never be divested by expiration of professional employment." (Nickels v. Griffin, 1 Wash. Terr. 374, 321 A.L.R. 1316.)

The complaint that petitioner's remedy is by appeal and not by certiorari deserves scant attention\* The courts have summary jurisdiction to protect the rights of the parties and the public from any conduct of attorneys prejudicial to the administration of justice. The summary jurisdiction of the courts over attorneys is not confined to requiring them to pay over money collected by them but embraces authority to compel them to do whatever specific acts may be incumbent upon them in their capacity of attorneys to perform. The courts, from the general principles of equity and policy, will always look into the dealings between attorneys and clients and guard the latter from any undue consequences resulting from a situation in which they may stand unequal. The courts act on the same principle whether the undertaking is to appear, or, for that matter not to appear, to answer declaration, etc. (6 C.J. 718; 7 C.J.S. 1005.) This summary remedy against attorneys flows from the fact that they are officers of the court where they practice, forming a part of the machinery of the law for the administration of justice and as such subject to the disciplinary authority of the court and to its orders and directions in respect to their relations to the court as well as to their clients. (Charest vs. Bishop, 137 Minn. 102, 162, N.W. 1062, Note 26, 7 C.J.S. 1007.) Attorneys stand on the same footing as sheriffs and other court officers in respect of matters just mentioned.

We conclude therefore that the motion for disqualification should be allowed. It is so ordered, without costs.

Moran, C.J., Ozaeta, Paras, Feria, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.

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