

MANILA LUMBER, INCORPORATED, COMPLAINANT, VS. PABLO ORO, RESPONDENT.*Adm. Case No. 804. March 03, 1937*

Ponente: DIAZ, J.

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The Manila Lumber, Incorporated, through the manager thereof, W. A. Smith, filed charges of malpractice against Attorney Pablo Oro for having collected from it allegedly exorbitant fees amounting to P2,251.89, his services having consisted merely in collecting from a judgment debtor 90 per cent of the sum of P5,004.20 or P4,503.78.

It appears from the facts stated in the pleadings of both the complainant and the respondent that the former, as collection agent, delivered to the latter for collection a bill held by Walter A. Smith against Walter A. Smith & Co., Inc., against which judgment had been rendered in civil case No. 9885 of the Court of First Instance of Iloilo entitled Pacific Commercial Co. vs. Walter A. Smith & Co., Inc.

Thanks to the efforts exerted by the respondent, who filed a third party claim, in said case in the name of the complainant which had been promised a commission of 90 per cent if it succeeded in collecting the sum in question, when the judgment rendered therein was being executed, the provincial sheriff succeeded in collecting said sum of P5,004.20 which he later turned over to the respondent, after deducting the incidental expenses of execution and the fees which said officer was entitled to collect under the law. The exact amount turned over by the provincial sheriff to the respondent was P4,503.78. Once said sum was in his possession, the respondent, desiring to have the amount of the fees, which he was entitled to receive for his professional services as attorney rendered to the complainant, determined, applied for that purpose to the Court of First Instance which issued the writ of execution, by filing a motion in the same case where said proceedings took place, praying that the fees in question be fixed at 45 per cent of said sum of P5,004.20, or one-half of P4,503.78. The complainant then appeared in said case to oppose the respondent's motion and maintained, as it again maintains now, that 45 per cent of P5,004.20, or one-half of P4,503.78, which the respondent attempted to collect as fees, was very excessive. The lower court, after hearing the parties and passing upon the reasons alleged by both, decided the incident in favor of the respondent by means of its order of January 20, 1937, the dispositive part of which reads as follows:

"Therefore, after considering the reasons stated by both parties in their respective pleadings, and taking into account the fact that it was due to the efforts exerted by the petitioner as attorney that the Manila Lumber, Incorporated, succeeded in collecting the sum of P5,004.20 representing its 90 per cent commission as collection agent, the court is of the opinion and so holds that said petitioner Mr. Oro is entitled to 45 per cent of the sum of P5,004.20, which is one-half of the commission collected by the oppositor Manila Lumber, Incorporated."

The complainant not only did not appeal from the order in question but did not even except thereto. On the contrary, it accepted the other 45 per cent of the amount received by the respondent from the hands of the provincial sheriff who served the writ of execution, by virtue of the third party claim filed by the respondent.

The lower court undoubtedly had jurisdiction and authority to pass upon the question then raised by the complainant in said civil case No. 9885 and likewise had jurisdiction and authority to decide whether or not the respondent's act constituted malpractice. Inasmuch as the complainant failed to appeal from the order of the lower court, the incident must necessarily be considered as having been finally decided, and it cannot again be raised in any other form in this or in any other court. The collection made by the respondent was in good faith and furthermore it merited the approval of the court. This being so, it cannot constitute a ground for a proceeding for malpractice.

On the other hand, a collection made under the circumstances of the present case can hardly be considered excessive. The complainant was merely a collection agent. It received the bill, the collection of which was entrusted by it to the respondent, in order to earn a commission of 90 per cent if it succeeded in collecting the same, and nothing if it failed to do so. It contributed nothing but the task (if it may be called a task), of entrusting the case to the respondent. It was the respondent who, making use of his knowledge of the law, did all the work until it was finished, thereby benefiting the complainant which, instead of earning nothing,—the bill belonging to another and the condition being that it would earn the commission agreed upon provided it succeeded in collecting something which, of course, could be one hundred pesos, more or less—at least collects, and in fact has already collected and received from the respondent before the institution of this proceeding, the sum of P2,224.59. If the complainant, in spite of the respondent's efforts, had succeeded in collecting only one hundred pesos, the respondent would have had to be contented with only forty-five pesos. If it had not succeeded in collecting anything, it would have lost nothing; on the contrary, the respondent would have lost time and energy, and he would have worked in vain. A collection made under said circumstances is not excessive.

For all the foregoing, this court decides to reject and hereby rejects the charges against the respondent, ordering the dismissal of this case. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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