

ARSENIO R. REYES, PLAINTIFF AND APPELLANT, VS. MARCIAL DE LA CRUZ, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 12729. March 30, 1959*

Ponente: MONTEMAYOR, J.

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This is an appeal by Atty. Arsenio R. Reyes, plaintiff from the decision of the Court of First Instance of Manila, Judge Bonifacio Ysip presiding, in Civil Case No. 20670, ordering among other things that defendants-appellees pay to plaintiff-appellant an amount equivalent to 5 per cent of the amount adjudicated to each of them, from the estate to which they were some of the heirs, based not on the market value but on the assessed value of the property appearing on the project of partition and distribution, with legal interest from the date of the filing of the complaint, and the payment of their proportionate shares of the costs.

Marcial, Asuncion, Eugenio, Lucia, and Alfonso, all surnamed de la Cruz, are some of the heirs of the deceased Anselmo S. Hilario. The five aforementioned heirs, on September 26, 1950, entered into a contract of services with plaintiff Reyes, the pertinent portions of which are reproduced below:

"We are hiring your services to represent us in Special Proceeding No. 7501, Court of First Instance, Manila, in such a way that we will be given all the due share arising out of the will and of the law. You will exercise all duties of an attorney to preserve and defend our rights until the project of partition is approved by the court.

"For and in consideration of the services which you are going to render to us in the said case we will pay you 5 per cent of the amount adjudicated to us. You will not be paid in cash by us for the time being that the case is pending in court. We have no money to pay. You will only be paid of your services when the case is terminated and our respective shares are delivered to us by order of court." (Exhibit A).

At the time this contract was entered into, the probate court had already ordered partition. It seems, however, that there was delay in its execution and implementation and the main purpose of hiring Atty. Reyes and the services to be rendered by him was to expedite the said partition. He helped in the preparation of the project of partition. After said project had been approved and the terms thereof had been carried out; the properties adjudicated to each of the said five heirs individually, were given to them; and the properties which were to be held in common was determined, the plaintiff filed this action to recover his fees, namely, 5 per cent of the market value of all said properties; and P10,000 as moral damages, P10,000 as consequential damages, and P10,000 as attorney's fees.

The lower court denied the prayer for damages and attorney's fees. It held that the 5 per cent mentioned in the contract for services referred to the assessed value, not the market value, because the latter was too speculative.

Although Marcial de la Cruz was included in the complaint, he died before the complaint was filed in court, and because no substitution was made of his legal representative, the trial court believed itself not to have acquired jurisdiction over his estate, and so confined the proceedings to the four heirs.

The main issue in this appeal is whether the contract for services referred to the assessed value or to the market

value of the properties adjudicated to the four heirs. We agree with the trial court that the 5 per cent could refer only to the assessed value, for that was the only value then known to the parties to the contract, said value appearing in the inventory of the estate of the decedent. The market value of a property is, as correctly said by the lower court, too speculative. From experience, we know that the determination of the actual or market value of real property is quite difficult. This difficulty is best exemplified in cases of expropriation. Because the parties almost invariably cannot agree as to the market value of the property to be expropriated, the court appoints commissioners to hold hearings and receive evidence, and even then, the commissioners not infrequently cannot agree among themselves. One commissioner may fix the fair market value of the property, say at P2.00 per square meter. Another commissioner claims that it is only P.30 per square meter, and the third commissioner might give a figure that falls between the estimates of his co-commissioners. Bearing this in mind, the parties to the contract could not have had in mind the market value of the properties to be adjudicated to the five heirs, which market value was then unknown and whose determination would be attended with difficulties and disagreements. But there was one value which they all knew, and that was the assessed value appearing in the inventory and on the basis of which the partition was to be made. That must have been the value and the only value which they agreed upon.

Moreover, if following the theory of the plaintiff, the contract referred to the market value, at what time was said market value to be ascertained, considering that real estate values fluctuate from time to time, depending on the need for real estate, say for building purposes if urban, or for agricultural purposes if rural, and also upon whether there is plenty of money in circulation or not. Was this time of the determination of the market value, the date when the contract was entered into, or the date when the partition was actually made, or the day when the plaintiff made a demand for the payment of his legal services? It is a well known fact that the tendency of real estate values is to go up with the years, and naturally if the market value of the properties in question was to be ascertained not at the time that the contract was entered into, but on the day that the partition proceedings were terminated and the legal services of the plaintiff were ended, then there might, nay, would be a real and substantial difference in the two values, and it is not likely that the defendants-appellees herein would have assumed that hazard or risk. This, aside from the consideration that because of this tendency of real estate values to rise, if the determination of the market value is to be made upon the termination of the partition proceedings, then any undue delay in the said proceedings would tend to increase said market value and might constitute a temptation for a lawyer similarly situated to agree to, if not actually work for said delay.

Another aspect of the case bears consideration. It was the plaintiff-appellant who prepared the contract for services. Being a lawyer, he knew the meaning and value of every word or phrase used in said contract. If the parties, including himself, really had in mind not the assessed value but the market value, it would have been so easy for him to have used and inserted said phrase, "market value", in order to remove and avoid all ambiguity and uncertainty. We reproduce with favor what the lower court said on this point:

"It has been proven that the plaintiff himself was the very-person who prepared the document, Exhibit A. Therefore, if there is any ambiguity or obscurity in the interpretation and meaning of said contract, the same "shall not favor the party who cause the obscurity" (Art. 1377 of the Civil Code corresponding to Art. 1288 of the Spanish Civil Code of 1889) *Yatco vs. El Hogar Filipino* 67 Phil., 610; *Calanoc vs. Phil. American Life Insurance Co.*, 52 Off. Gaz., 191, 792."

The lower court considered the claim of plaintiff for legal services as exorbitant and unconscionable. After considering the circumstances in the case, we cannot say that the lower court was wrong. The lawyer who represented the administrator from the very beginning and rendered legal services in connection with the administration not only of the properties to be adjudicated to the defendants herein but to the whole estate, was paid only about P30,000. Plaintiff-appellant whose legal services were relatively much less may not claim fees

more than what was received by the attorney for the administration.

We understand that plaintiff-appellant has already received about P5,000 as his fees from the estate of Marcial de la Cruz against which he filed a separate case. On the basis of the assessed value of the properties adjudicated to the four remaining heirs, in the present case, which is P149,685.69, 5 per cent of the same would be almost P8,000. If we add this sum plus its legal interest from the filing of the complaint as ordered by the court, to the P5,000 plaintiff had received from the estate of Marcial de la Cruz, he would have a total of around P14,000 which in our opinion is sufficient, even more sufficient and adequate payment for his legal services in this case.

In view of the foregoing, the appealed decision is hereby affirmed, with costs.

Padilla, Reyes, A. Bautista Angela, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.
Bengzon, J., concurs in the result.

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