

**JOSE FERNANDO RODRIGO, PLAINTIFF AND APPELLANT, VS.
CONCEPCION CABIGAO AND LUIS IZQUIERDO, DEFENDANTS AND
APPELLANTS.**

G.R. No. 37590, December 21, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The action brought by the plaintiff arose from the relation of attorney and client between the parties and the deceased Tomas Cabigao.

After the trial and upon consideration of the voluminous evidence presented, the court rendered judgment ordering the defendants to pay the sum of P2,500 to the plaintiff and dismissing the numerous counterclaims and cross-complaints filed by the said defendants, without costs. Both parties to the suit were not satisfied with the judgment thus rendered and appealed therefrom.

The facts in controversy are varied but all of them hinge upon the fees claimed, the reasonable value of the services rendered, the nature of such services and the accuracy and feasibility of the counterclaims and cross-complaints. As they are interesting and because they clearly summarize all the questions involved in the case we are reproducing the conclusions of fact and of law arrived at by the trial court, to wit:

"The amount claimed by the plaintiff as presented under different items is as follows:

"P16,000,

representing the unpaid balance of the promissory note, Exhibit M, the translation of which reads as follows:

" 'We, the spouses Luis Izquierdo and Concepcion Cabigao, hereby acknowledge being indebted in the sum of twenty seven thousand pesos (P27,000) to Mr. Jose Fernando Rodrigo, for professional services rendered in connection with all our cases from the year 1917 up to * * * together with those pending both in the Supreme Court and in the Court of First Instance of Bulacan. The amount which will result from our liquidation of the different sums he had received during the lifetime of our father Tomas Cabigao, as well as during the time he had been acting as judicial administrator of his testamentary estate, will be deducted therefrom. This debt shall be paid upon the termination of the testamentary proceedings as well as the pending litigations.

" 'In witness whereof, we hereunto affix our signatures this 7th day of August, 1926, at Bulacan, Bulacan, P. I.

" '(Sgd.)

CONCEPCION CABIGAO "

" 'LUIS IZQUIERDO'

"P2,900,

for services rendered and for money advanced in civil case No. 6788 of the Court of First Instance of Iloilo, entitled Jose Zulueta, plaintiff, vs. Luis Izquierdo and Concepcion Cabigao, defendants.

"P250,

for fees in civil case No. 64206 of the Municipal Court of the City of Manila, entitled Maria Magtunao, plaintiff, vs. Concepcion Cabigao, defendant.

"P2,500,

deposited with him to be applied to the unpaid balance of the promissory note quoted above.

"The defendants Cabigao and Izquierdo, in turn, allege by way of special defense, that the above-quoted promissory note was null and void on the alleged ground that it was executed during the time the relation of attorney and client still subsisted between them and the plaintiff; that the amount thereof was excessive and unjust and that it had been obtained by the plaintiff under the pretext of needing it to pacify impatient creditors and for the purpose of 'showing off' as being among those who earn fat fees; that the alleged services rendered by the plaintiff were worth only P3,000; that part of the alleged fees relative to the testamentary proceedings of Tomas Cabigao has already prescribed on the ground that it had not been presented to the committee on claims and appraisal; that the promissory note has not yet become due on the alleged ground that civil cases Nos. 2039 and 3397 are still pending on appeal in the Supreme Court. In their cross-complaint and by way of counterclaim they seek to recover the following:

"P17,000,

for fees already collected and loans contracted by the plaintiff since the year 1916, in excess of the sum of P3,000 which is the actual value of his services.

"P20,000,

as indemnity for the poor defense he set up in case No. 2029, entitled Petrona Lim vs. Tomas Cabigao, which resulted in their being ordered to pay P12,200 instead of collecting said amount.

"P4,500,

for damages suffered (by the defendants) through the negligence of the plaintiff in the discharge of his duties as attorney in civil case No. 3590, entitled Eugenio Lim Pineda vs. The defendants.

"P2,400,

for having been ordered to pay the total amount of P2,400 in the case of Jose C. Zulueta in consequence of the plaintiff's inexperience and negligence as attorney. "P5,000, which they had to pay to Andres Pascual because the plaintiff leased two fish-ponds belonging to the intestate estate of Tomas Cabigao for P3,000, without permission of the court.

"FACTS

"It is a proven fact that three years after he had been qualified by the Supreme Court to practice his law profession, in or about the year 1918, the plaintiff herein met Tomas Cabigao, father of the defendant Concepcion Cabigao, during one of said Tomas Cabigao's trips from Bulacan to Manila. Having introduced himself as a relative of said Tomas' wife who is Concepcion Cabigao's mother, he offered his services as attorney in the cases they might then have. In consequence, he was entrusted with the study of a contract they had executed in connection with some nipa land to be converted into a fish-pond for the reason that the nipa land, in the state it was then, had very little value. This instrument gave rise to case No. 2029 and to several other cases which will be discussed later. The plaintiff had won the confidence of the Cabigaos and thenceforth they entrusted him with other cases, among which were those designated as Nos. 3397, 2039, 3111, 3590, 255 and 2067. In all the above cases, the plaintiff intervened either alone or with the aid of other attorneys and until the year 1926 he did not have any definite understanding with the Cabigaos regarding the amount of his fees. In September, 1922, while many of the above cases were still pending, Tomas Cabigao died and the plaintiff instituted proceedings in case No. 2710 .for the probate of the will left by him. The plaintiff was appointed administrator and although he did not actually manage the testamentary estate for the reason that it was under Cabigao's charge, he had been receiving collections from lands under litigation or from those under lease, which had to be paid to the legal representative of the testamentary estate.

"The plaintiff discharged his duties as such administrator for four years. He never kept account of his administration during that period of time and, although he used to deposit the amounts he received as such in the bank, he did not do so in the name of the estate he represented but in his own name. Neither did he render any accounting thereof.

"Although she did not require the keeping of an account, the defendant Concepcion Cabigao, who was instituted universal heir of the estate left by the deceased Tomas Cabigao under his will, was continuously and constantly receiving money from the plaintiff on account of her participation, issuing receipts therefor when asked to do so, and relying upon the former's notes when otherwise. Neither did she keep an account of what she received. The result was that neither one (plaintiff and defendant) could balance his or her accounts and this led to constant disputes which took place when, for one reason or another, the plaintiff could not attend to the defendant's demands or when he charged sums, which she claimed not to have received, to her account. To obviate such inconvenience both agreed to terminate the testamentary proceedings and to straighten out their transactions. This opportunity was taken advantage of to determine the amount of the plaintiff's fees. As a result the promissory note, Exhibit M, was executed, reserving the balancing of the accounts of the administration for a later date. How this balance was arrived at cannot be ascertained but it is assumed that steps had been taken to that effect inasmuch as two days after the promissory note was signed, the defendant Cabigao signed Exhibit O which terminated the testamentary proceedings as she had requested, stating therein that she had no objection to the acts of the plaintiff as administrator and relieving him of all responsibility, not only relative to the inventory but also to the accounts of the administration. This document itself shows that Exhibit M was executed on August 7, 1926, and the instrument Exhibit O was signed two days later, that is, on August 9, 1926.

"Sometime later, Concepcion Cabigao had several cases for which she retained the services of the herein plaintiff. Among the said cases were those designated as No. 6703 of the Court of First Instance of Iloilo, No. 64206 of the Municipal Court of the City of Manila, and No. 3390 of the Court of First Instance of Bulacan. She never had any litigation regarding fees with him until the institution of the present action. On the other hand, her other attorneys Messrs. Feria and Zulueta were compelled to file complaints against her the former for the recovery of an unpaid balance of his fees, in the sum of P500, and the latter, the total amount of his fees, which were first appraised at more than P6,000, but which were reduced to approximately one half that amount under a judgment based upon an agreement of the parties.

"The relations between the plaintiff and the defendants, which began in the year 1918, had been pleasant and did not become disagreeable until after the year 1927 when their last suits were terminated and the plaintiff claimed the right to retain some credits payable to the defendants. which were deposited with the Court of First Instance. Such relations, however, were not entirely severed until the occurrence of the following incident: The defendants had delivered to the plaintiff herein a certain amount of money with which to settle amicably a case against one Eugenio Lim Pineda. The plaintiff, who had received the money in question under promise to settle the case, did not do so, for some reason or other, yet he did not return the money turned over to him for that purpose, on time. The defendants, therefore, became disgusted with his conduct. The intervention of an attorney who fanned the flame of discord, precipitated the formal break. The defendants filed charges for malpractice against the plaintiff and the latter, in retaliation, filed the present complaint which gave rise to the proceedings now under consideration.

"Before the filing of the complaint, the defendants never questioned the validity of the promissory note, Exhibit M. Although they did not pay regularly and were only forced to do so because the plaintiff took advantage of every opportunity to collect on account, they had to conform thereto but not without reluctance (see document 1-Q), and were able to pay around ten thousand pesos (P10,000) on account of the promissory note in question. By reason of their displeasure in the Lim Pineda case, they felt that they had already paid him enough and demanded the return of the promissory note to them. Neither did they bring an action for nullity in order to be relieved from the effects of said promissory note.

"The case was called for trial after many postponements. Collation was¹ made of former transactions and accounts carried before the termination of the testamentary proceedings of Tomas Cabigao, that is, in or about the year 1926, before the execution of Exhibit M and the filing of the document Exhibit O which terminated the said testamentary proceedings.

"The undersigned, who penned this decision, had heard the oral testimony of both parties and duly considered all vouchers attached to the records of the case, and had not found any possibility of balancing said accounts, even approximately, on the ground that each party has tried his best to augment each item in his favor, even against his positive knowledge that it was duplicated, and attempted to distort and alter the facts thereof in order to justify his alleged credits, particularly those the genuineness of which were not attested by the signature of the adverse party. After the lapse of 5 or 6 years from the termination of a testamentary proceeding (1926 to 1931), it becomes impossible to ascertain what took place before it. To claim to have gathered all vouchers therein when there are strong reasons to believe that many of them have been lost, if not destroyed, is too much pretension which may result in nothing more than mere gossip and malicious insinuations, and countenance the much abused practice of 'laying the whole blame upon the other fellow.'

"Under such circumstances, the undersigned confesses that he is not in a position to administer strict justice in the present case, and that, inasmuch as he is compelled to render judgment herein, he has no other alternative except to resort to equity and take advantage of presumptions inferable from acts as admitted by each party.

"No question relative to accounts previous to the termination of the testamentary proceedings of Tomas Cabigao can be raised in this case. All that had been done in connection with debts and collections in favor of or against each party, prior to that date, was settled with the termination of the testamentary proceedings of Tomas Cabigao, case No. 2710, on the ground that the document Exhibit O had relieved the plaintiff of all responsibility relative to inventory and accounts of the testamentary proceedings in question.

"The said testamentary proceedings having been terminated, the defendant Cabigao is now estopped from reviving the question of accounts on the ground that, by affixing her signature to Exhibit O, she induced the court to terminate it and she has to abide by the consequences of her act.

"It is true that she defended herself by alleging that she had been induced to do so by the plaintiff Rodrigo, but the court which saw her testify and observed her attitude during the trial, which, far from being shy, was aggressive and intelligent, cannot believe that she could have been influenced to sign the aforesaid Exhibit O by means of nicely coined phrases. Furthermore, if we were to take into account the fact that she was already married at the time she signed the said document and that her husband, an intelligent man, who speaks Spanish fluently, had acted as her adviser, there would be less reason to believe that she had been tricked by the plaintiff into signing the document in question. She had allowed five years (1926 to 1931) to elapse without complaining of the alleged fraud and she did not complain in her own motion but merely took advantage of the opportunity afforded her by a counterclaim. Under this circumstance, there is every reason to believe that her defense is unfounded and that such allegations were made in view of her advantage as a client in a suit against her attorney.

"Let us now discuss the question raised relative to the validity of Exhibit M. This is a promissory note for the payment of fees, which was undoubtedly signed while the relation of attorney and client still subsisted between the plaintiff and the defendants. The undersigned entertains no doubt regarding his authority to pass upon the question of whether the credit, the payment of which is claimed thereunder, is adequate or excessive. In order to do so in the present case, it is necessary to determine how much has already been paid on account of the said promissory note and whether or not the defendants, who signed it may still be bound to pay the unpaid balance thereof.

"The evidence presented by one as well as the other party, that is, by the plaintiff with respect to the amount he had received, and by the defendants to the amount paid, is absolutely inadequate to reach an approximate balance thereof. This is due to the same reason as above stated in connection with the balancing of the accounts of the administration. However, considering the fact that the plaintiff first admitted having received P1,000, although he later made an unjustified attempt to reduce it very materially in his amended complaint; that although the defendants allege having paid the sum of P17,000, they were unable to prove it by means of the documents presented, some of which did not bear the plaintiff's signature, while others were signed by other persons who were not proven to have been authorized to collect in his name; that many of the items contained in the account presented by the defendants constitute expenses incurred in the proceedings and therefore cannot be considered as fees in the absence of an express agreement to the contrary; the undersigned, without claiming absolute correctness in his estimate, is of the opinion that he is not far from the truth in holding: that the money received by the plaintiff may amount to P12,500, more or less, including the sum of P2,500 which he admits having retained against the accounts of the defendants; that this amount is adequate to compensate the services he had rendered from 1918 to the date of the filing of his complaint, February 2, 1931, making sufficient allowance for all carelessness or negligence incurred in good or bad faith for which the defendants may hold him accountable. The plaintiff might have made mistakes, who does not make them? However, his mistakes are not so gross as claimed and refer to rather disputable questions or, at most, to those which require clearness of perception, as assumed by his critics, or very accurate analysis expected only of a learned attorney with vast experience, of whom there are

very few, and for whom the amount appraised herein, for the plaintiff's services, is ridiculously low.

"No mention is made herein of the opinion rendered by the attorneys who appeared as experts, one to point out the mistakes committed by the plaintiff, and another to appraise the amount of the plaintiff's fees, on the ground that the opinion of the former is likened to that of a critic who, from his comfortable armchair, points out the defects of a well known theatrical play by merely repeating the criticisms already launched by another (he dwelt mainly on already decided cases), which opinion is absolutely different from that to be rendered in the deliberation of a scheme the result of which, whether good or bad, depends upon various contingencies; while that of the latter is based merely on papers and documents which he had on hand or which were shown him by the defendants, not by the plaintiff, which opinion may be rendered incomplete or lacking inasmuch as it is evidently founded on deficient data, and because the services of an attorney is not confined only to that which appears in the record of the case.

"The defense of prescription as set up by the herein defendants, in connection with the plaintiff's services as administrator, cannot be entertained on the ground that the circumstances under which the promissory note Exhibit M had been executed, and even the terms thereof, show beyond the shadow of a doubt that the fees in question were included in determining the amount stated therein.

"That the sum of P2,500 credited in his decision as part of the plaintiff's fees, which were appraised therein at P12,500, is the sum retained by the said plaintiff with which to settle the transaction with Eugenio Lim Pineda, and the same P2,500 which he placed at the disposal of said Eugenio Lim Pineda in payment of the latter's credit against the defendants (document appearing on pp. 16-18 of the record), and that the P2,500 in question is the same sum ordered by Judge Lesaca to be delivered to Eugenio Lim Pineda's attorney (p. 24 of the record) on February 25, 1931, and which Attorney Nicolas Santiago, in the name of Attorney Francisco, who represented said Eugenio Lim Pineda, collected under check No. 142008, as shown on the same page 24 of the record."

As may be seen, the court held that the plaintiff was well compensated with what he had already received from the defendants and the deceased Tomas Cabigao, amounting to P12,500 more or less, including the sum of P2,500 granted him in the decision, as amended. In his brief the plaintiff assigns four alleged errors and attempts to show by his arguments in support thereof that he is entitled to the additional amount claimed in his complaint. We deem correct the conclusion arrived at by the trial court to the effect that under the evidence presented, the time that has elapsed, and the death of Tomas Cabigao, it is difficult, if not practically impossible, to determine the true figures as well as the exact amount of money actually advanced to the plaintiff. However, taking into consideration all the evidence we have on hand, we cannot help but declare that the preponderance thereof supports the conclusion that the plaintiff has already been compensated adequately and reasonably with the amount which he has already received together with the sum of P2,500 still to be paid to him.

The same thing is true with respect to the claims of the defendants. They assign no less than eighteen alleged errors in the decision in an attempt to justify their contention that the court should have sentenced the plaintiff in accordance with their counterclaims and cross-complaints. Inasmuch as the considerations stated in the decision already decide the merits of the contentions of the defendants, suffice it to say for the sake of brevity, that the evidence, which we have carefully examined, supports the judgment rendered by the trial court and does not justify the claims of the defendants.

Wherefore, not finding any substantial error susceptible of reversal or modification in the decision appealed from, it is hereby affirmed, without special pronouncement as to the costs of this instance. So ordered.

Avanceña, C. J., Malcolm, Villa-Real, and Hull, JJ., concur.

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