

RUPERTO MONTINOLA, PLAINTIFF AND APPELLANT, VS. LUCRECIO HOFILEÑA ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 4882. March 27, 1909

Ponente: CARSON, J.

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CARSON, J.:

Plaintiff, an attorney, entered into the following written contract with one of the defendants, Lucrecio Hofileña, for professional services to be rendered in accordance with its terms:

"We, Lucrecio Hofileño, married and a resident of the city of Jaro, municipality of Iloilo, Province of Iloilo, the party of the first part, and Ruperto Montinola, attorney at law, and a resident of Calle Iznart, municipality of Iloilo, Province of Iloilo, P. I., the party of the second part, do hereby agree to the following: First, that the party of the second part, or Ruperto Montinola, will take charge of the defense of the defendants in the cases entitled 'Carmen Javellana vs. Lucrecio Hofileña and Candelaria Jabelona' and 'Carmen Javellana vs. Antonia Jayme pending before the Court of First Instance, and all the expenses for the court's fees, sheriff, and the printing of the bill of exceptions and brief shall be for account of the party of the first part. Second, that the party of the first part, or Lucrecio Hofileña, in consideration of the professional services above mentioned, binds himself to pay to the party of the second part, or Ruperto Montinola, the sum of P750 up to this date to his full satisfaction, and the sum of 92,000, in addition thereto, in case the decision in the second instance, or in the Supreme Court, be in favor of the defendants."

At the time of the execution of the contract, Hofileña paid the plaintiff P700, and thereafter plaintiff acted as counsel for the defendants in the two cases mentioned in the contract. In the case of "Carmen Javellana vs. Lucrecio Hofileña and Candelaria Jabelona," judgment was rendered in the Court of First Instance in favor of plaintiff's clients, but the case did not come up on appeal, apparently as the result of a compromise between the parties, by virtue of which the second case mentioned in the contract was dismissed without being brought to trial, and the judgment in the above-mentioned case was allowed to become final without appeal. Some time afterwards Hofileña, through his attorney, paid plaintiff the sum of P800, but thereafter declined to make any further payments, and this action was instituted to recover a balance of P1,200, which plaintiff alleges to be still due under his contract.

It will be seen by an examination of the terms of the written contract that it was made in contemplation of a state of facts which never arose. Plaintiff contracted to conduct certain cases in the trial court and the court of appeal, and in the event that he brought those cases to a successful issue in the Supreme Court he was to be paid a stipulated sum. Testifying in his own behalf, he said that "when we made this contract we were under the firm belief that those cases would be taken to the Supreme Court, taking into consideration the natural, pretensions of both parties;" and it is clear that in making the contract neither party contemplated final settlement by litigation terminating in the trial court, and presumably for that reason entered into no express agreement as to compensation for services in that event.

Plaintiff claims that what was really agreed to was that the defendant should pay the amount specified in the

contract as soon as the judgment in the cases mentioned therein became final; but the language of the contract itself, when fairly construed, does not admit of such a construction, and it may fairly be assumed that the very substantial fee contracted for was agreed to by plaintiff's clients in contemplation not only of the necessity for services in the trial court, but for services to be rendered in the Supreme Court, to which the contracting parties believed the cases would be carried.

The conditions contemplated in the express contract between the parties not having arisen, and plaintiff not having rendered the services contemplated therein in accordance with its terms, it is clear that he is not entitled to recover upon the contract; and under the provisions of section 29 of the Code of Civil Procedure he is only "entitled to have and receive from his clients reasonable compensation for the services rendered, with a view to the importance of the subject-matter in controversy, to the extent of the services rendered, and his professional standing as a lawyer." There is no evidence in the record on which we can base a judgment that plaintiff is entitled to compensation other than that which he has already received, for the services actually rendered by him.

The fact that one of the defendants paid P800 since the services were rendered is no evidence that the services were worth more than that amount together with the cash payment of P700 made at the time the contract was executed. The circumstances under which this payment was made do not appear, but it is clear that if it was paid under the erroneous impression that plaintiff was entitled thereto under the terms of the written contract, such payment in no wise binds him to make any further payment under that contract; and if it was made simply on account of services rendered, such payment is not in itself an admission that the services were more than that amount, or an agreement to pay more.

Plaintiff, testifying in his own behalf, says that some time after this payment was made Hofileña verbally promised to pay the balance due upon the contract at a time fixed by him. It seems clear that this promise, if made, as plaintiff alleges, was made under the mistaken belief that plaintiff was entitled to recover the amount promised under and by virtue of the written contract; and it appearing that Hofileña was not in fact bound by the terms of the written contract, and that no services were rendered thereunder, it is evident that defendant's alleged promise to pay the amount stipulated therein can not be enforced.

Arellano, C. J., Torres, Johnson, and Willard, JJ., concur.

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