

**MODESTA BORCENA, ANTONIO GIMENO, JR., ESTELA GIMENO
ROLANDO GIMENO, EDGARDO GIMENO AND ANELIA GIMENO,
PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, HON.
CLEMENTE D. PAREDES, RO...**

G.R. No. 70099. January 07, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioners question the amount which the respondent Court of Appeals and the trial court ordered to be paid to their former lawyer, as his compensation.

On July 6, 1981, the petitioners engaged the legal services of respondent Gil P. de Guzman under the following terms and conditions:

"Dear Atty. de Guzman:"For purposes of handling our case against Nam Kwang, Socea Bonna, Metropolitan Waterworks and Sewerage System, and other persons who are parties to the total or partial destruction of some of our road and residential lots at the Memorial Park Subdivision, Bigti, Norzagaray, Bulacan, we hereby retain and employ the legal services of your Law Office towards its prosecution. For your services, we hereby offer you the following schedule:

"a) 20% of our total claim, for and as attorney's fees;

"b) 5% of our total claim, for and as representation and miscellaneous expenses;

TOTAL: 25%

which shall be payable to you and may be collected from us anytime after its complete payment by the said defendants, either solidarily or collectively. It is hereby understood that apart from this, whatever judgment attorney's fees may be awarded by the court against said defendants, the same shall accrue to you which shall not form part of our contingent fee.

"We hope that you will handle this case for us.

"Very truly yours,

MODESTA BORCENA, ANTONIO GIMENO, JR.

ESTELA GIMENO, ROLANDO GIMENO, EDGARDO

GIMENO, AND ANELIA GIMENO

CONFORME: By:

GIL DE GUZMAN

ROLANDO GIMENO"

On this same date, respondent de Guzman filed a complaint for damages against the Metropolitan Waterworks and Sewerage System, (hereinafter called MWSS) Nam Kwang, Socea Bonna and Chun Bae Kim, which was docketed as Civil Case No. SM-1208. The pertinent allegations of the complaint are as follows:

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"11. That sometime in February, 1980, or immediately preceding or subsequent thereto defendants, without any notice and against the will and consent of herein plaintiffs, entered a portion of said property and bulldozed the fully developed lots, and committed waste, destruction and depredation thereon, causing all monuments of title, drainage system, subdivision lots, ornamental trees resulting to total wreck to 23 fully developed lots and flood of about 16 lots causing them wanton and unseconded (sic) damages founded in the books of law;

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"12. That defendants, despite previous repeated demands from plaintiffs to indemnify them for damages and losses they have caused the plaintiffs, failed and refused and still continue to fail and refuse to pay actual and compensatory damages in the amount of P670,000.00;

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"13. That due to the unlawful acts of the defendants violating the rights, plaintiffs, the latter suffered and still continue to suffer sleepless nights, loss of business standing, serious anxieties and besmirched reputation assessable as moral damages in the amount of P30,000.00;

"14. That to serve as an example to other would-be defendants similarly situated with defendants herein, plaintiffs are entitled against the defendants corrective and exemplary damages in the amount of P10,000.00;

"15. The plaintiffs in order to protect their rights and interest so unduly abused by herein defendants are constrained to litigate and to retain the professional services of counsel in the amount of 20% representing the total claim of plaintiffs against the defendants, for and as reasonable attorney's fees;"

The complaint was later amended by dropping Chun Bae Kim as defendant. Defendants Nam Kwang and Socea Gonna were subsequently declared in default.

On June 18, 1982, Atty. de Guzman filed a motion for preliminary attachment praying that an order be issued attaching properties of the defendants amounting to P710,000.00 plus 20% thereof representing attorney's fees, or a total of P852,000.00. The motion was granted upon plaintiffs' posting a bond of P852,000.00 issued by a bonding company acceptable to the court.

The MWSS was directed to hold in trust the P852,000.00 payable to Nam Kwang prompting the plaintiffs to file a motion for them to take custody of the P852,000.00. The motion was denied in the order dated October 20, 1982.

On December 7, 1982, the court directed the MWSS to turn over the P852,000.00 to the deputy sheriff and for the latter to deposit the same with the Sta. Maria Municipal Treasury. The court also ordered that withdrawals must be upon its orders. This order was amended on December 15, 1982 when MWSS was directed to prepare and issue the check in the name of Rolando Gimeno for the amount of P852,000.00, and to release said check to him upon proper identification. At the same time, the deputy sheriff was directed to receive the check from Rolando Gimeno and deposit the same with the municipal treasurer of Sta. Maria, Bulacan.

In compliance with the court orders, MWSS issued and released — (1) PNB Check No. 070925 in the amount of P746,111.71 and (2) PNB Check No. 070928 in the amount of P105,888.29, both dated December 20, 1982 payable to Rolando Gimeno for deposit with the Municipal Treasurer of Sta. Maria, Bulacan.

On January 11, 1983, De Guzman filed a manifestation questioning the restriction on the checks that the same be deposited only with the Municipal Treasurer of Sta. Maria, Bulacan as uncalled for and contrary to the court's order of December 7, 1982 as modified by the December 15, 1982 order.

On March 17, 1983, Rolando Gimeno on behalf of the other plaintiffs (petitioners herein) and in his own behalf sent a letter to Atty. de Guzman terminating his services as their counsel. The relevant portions of the letter read as follows:

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"Sir:

"We regret to inform you that your services as our Counsel in all our cases and legal problems are terminated effective immediately.

"The decision to terminate your services was engendered by your failure and/or refusal to return to Mr. Rolando B. Gimeno the PNB Checks for deposit with the Municipal Treasurer of Sta. Maria, Bulacan, although the same are now almost three (3) months old and may become stale. Furthermore, transfer of said deposit to a bank may be asked from the Court so that said money can earn interests. Undersigned have lost interest earnings on said money for three (2) months now.

"Kindly return to Mr. Rolando B. Gimeno all our case records involving all our legal problems still in your possession; and bill us for your services rendered thus far, and we assure your goodself you will be amply compensated."

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On March 24, 1983, Atty. Perpetuo L. B. Alonzo entered his appearance as new counsel for the petitioners.

On March 25, 1983, Atty. de Guzman filed an opposition to Gimeno's ex-parte motion to transfer deposit of garnished amount. He claimed that he never received the PNB checks, that Gimeno's affidavit of loss admits having received the checks from MWSS, and that Rolando Gimeno lost them. Atty. de Guzman also filed his comment stating that he has no objection to the substitution of counsel provided that the agreed honorarium is complied with, and subject to the attorney's lien.

On April 16, 1983, Atty. de Guzman filed an attorney's lien on the garnished amount of P852,000.00 pursuant to Section 26 of Rule 138. A motion dated April 18, 1983, prayed for the issuance of an order:

"1. Ordering the deposit of PNB Checks Nos. 070925 and 070928 both dated December 20, 1982 with PNB Branch in Malolos, Bulacan in the name of plaintiff Rolando Gimeno and movant Atty. Gil de Guzman under the following schedule, to wit:

"(a) Rolando Gimeno, as plaintiff

and attorney-in-fact -----P532,500.00

"(b) Atty. Gil de Guzman, for

his attorney's fees -----319,500.00

Total-----P852,000.00

to be withdrawn only upon order of the Court.

"2. Upon said deposit, ordering the depository bank to allow movant Atty. Gil de Guzman to withdraw, deducting from said account the amount of P319,500.00 as his lawful fees;

"3. Allowing the withdrawal of appearance of Atty. Gil de Guzman as counsel of record for plaintiffs.

"4. Granting such further and other reliefs just and equitable."

On May 14, 1983, the petitioners filed a manifestation and motion praying that: (1) the Court ascertain and fix the fees of Atty. de Guzman to be paid after the judgment award to the petitioners shall have been satisfied; and (2) that Atty. de Guzman be ordered to deposit in Court the PNB Checks and to deliver to the petitioners all documents in his possession.

On June 1, 1983, the lower court issued the challenged order declaring the termination of the legal services of Atty. de Guzman by the petitioners as unjustified. The dispositive portion of the order reads:

"WHEREFORE, in view of all the foregoing, the Court hereby fixes counsel Atty. Gil de Guzman's attorney's fees in the sum of P177,500.00 as per contract of legal services plus and apart from 20% of whatever attorney's fees may be finally awarded to plaintiffs should they ultimately prevail, and it is hereby further ordered that:

"1) Counsel, Atty. Gil de Guzman, should deliver within a period of 5 days from receipt hereof PNB checks Nos. 070928 in the sum of P105,888.29 and 070925 in the sum of P745,111.71 both dated December 20, 1982, to the Branch Clerk of this Court;

"2) The Branch Clerk of Court of this Court, upon receipt thereof, shall immediately deposit said checks in a savings deposit with the Malolos Branch of the Philippine National Bank in Malolos, Bulacan, in the names of Atty. Gil de Guzman and plaintiff and attorney-in-fact Rolando Gimeno, and to keep in his custody the savings deposit book, the deposit to be withdrawable only upon orders of this court;

"3) Plaintiffs to pay the sum of P177,500.00 to counsel Atty. Gil de Guzman in payment of the 25% attorney's fees,

"4) Atty. Gil de Guzman, upon payment of his 25% attorney's fees by plaintiffs, shall turn over to the latter all documents and records of the case, and thereafter, to cease as counsel for plaintiffs; and

"5) The P852,000.00 deposit to remain deposited with the depository Bank, until further orders of this Court, subject to a first lien in favor of Atty. Gil de Guzman on account of his 20% judgment attorney's fees."

On October 20, 1983, the lower court denied the petitioners' motion for reconsideration and opposition to the

motion for execution pending appeal, and granted the motion for execution pending appeal.

On November 3, 1983, a writ of execution pending appeal for P177,500.00 attorney's compensation was issued by the court.

As stated earlier, the Intermediate Appellate Court denied due course to the petition questioning the execution pending appeal.

Hence, this petition.

The pivotal issue in this case hinges on the amount of compensation to which Atty. Gil de Guzman is entitled for his legal services to the petitioners in Civil Case No. SM-1208.

The petitioners contend that the attorney's compensation provided for in the contract was neither fixed nor absolute but was contingent on the outcome of the final judgment. They maintain that "total claim" in paragraphs "a" and "b" of the contract should be construed in the context of the qualifying sentence "which shall be payable to you and may be collected from us anytime after its complete payment by the said defendants, either solidarily or collectively". They also maintain that Atty. Gil de Guzman was dismissed for a justifiable cause and that the amount of attorney's compensation granted by the lower court was unconscionable and unreasonable. The petitioners submit that the compensation of Atty. de Guzman should be determined and fixed on the basis of quantum meruit.

Both Sections 24 and 26 of Rule 138 of the Revised Rules of Court cited by the parties apply to the case at bar. Paragraph 2, Section 26, provides:

"A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. However, the attorney may, in the discretion of the court, intervene in the case to protect his rights. For the payment of his compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgment, rendered in the case wherein his services had been retained by the client."

while Section 24 states:

"An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable." (*Italics supplied*)

The stipulation of attorney's compensation in a contract for professional services can be reduced by the courts if found unconscionable and unreasonable. We have explained this well-entrenched principle:

"Contracts for attorney's services in this jurisdiction stand upon an entirely different footing from contracts for the payment of compensation for any other services. By express provision of section 29 of the Code of Civil Procedure, an attorney is not entitled in the absence of express contract to recover more than a reasonable compensation for his services; and even when an express contract is made the court can ignore it and limit the recovery to reasonable compensation if the amount of the stipulated fee is found by the court to be unreasonable. This is a very different rule from that announced in section 1091 of the Civil Code with reference to the obligation of contracts in general, where it is said that such obligation has the force of law between the contracting parties. x x x.

"Since then this Court has invariably fixed counsel fees on a quantum meruit basis whenever the fees stipulated appear excessive, unconscionable, or unreasonable, because a lawyer is primarily a court officer charged with the duty of assisting the court in administering impartial justice between the parties, and hence, the fees should be subject to judicial control. Nor should it be ignored that sound public policy demands that courts disregard stipulations for counsel fees, whenever they appear to be a source of speculative profit at the expense of the debtor or mortgagor. (See, *Gorospe, et al. v. Gochangco*, L-12735, October 30, 1959)." (*Mambulao Lumber Co. v. Philippine National Bank*, 22 SCRA 359, 371).

The lower court fixed the attorney's compensation of Atty. Gil de Guzman as follows: (1) P177,500.00 payable immediately and (2) 20% of whatever attorney's fees the petitioners may be awarded in Civil Case No. SM-1208 as attorney's lien.

Granting that the dismissal of Atty. Gil de Guzman was unjustified, it is obvious that, in the light of the services rendered, the stipulation of attorney's fees in the contract for legal services becomes unconscionable and unreasonable. Moreover, we tend to agree with the petitioners that Atty. de Guzman was dismissed for a justifiable cause. The petitioners contend that Rolando Gimeno delivered to Atty. de Guzman the PNB checks in the amount of P852,000.00 issued by the MWSS as a result of the writ of attachment and ordered them to be deposited with the municipal treasurer of Sta. Maria, Bulacan; that after three months, Atty. de Guzman had not delivered said checks so that Gimeno decided to take the checks and deposit them himself but Atty. de Guzman denied halving the checks and refused to return them forcing the petitioners to dismiss him. This assertion is given credence considering the explanation of the petitioners which is borne out by the records, to wit:

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"x x x [T]hat after claiming that he 'never and did not receive said checks nor (had them) in his possession', he finally admitted having possession thereof with a ludicrous explanation of such possession in his motion dated April 18, 1983 above quoted wherein he alleged that: 'On April 11, 1983, about 4:00 p.m., plaintiff Rolando Gimeno came to the office of the undersigned counsel and admitted his fault and turned over PNB Checks Nos. 070925 and 070928 both dated December 20, 1982 in the total sum of P852,000.00 in the name of Rolando Gimeno as plaintiff and attorney-in-fact which are now in counsel's possession and custody', after Atty. Alonzo had filed on April 14, 1983 a motion to declare him in contempt of court for denying and refusing to hand over said checks for deposit pursuant to the court's order of December 15, 1983. Respondent Atty. de Guzman's concocted claim that Rolando Gimeno turned over the said checks to him on April 11, 1983 is patently incredible because it is preposterous and utterly untrue, but typically characteristic of his dealings with petitioners as clients. If petitioner Rolando Gimeno had the checks and he and his new counsel had been demanding that respondent Atty. de Guzman hand over said checks in his possession to them so the same can be deposited in compliance with the court's order and had dismissed him for refusing to do so, why will he (Rolando Gimeno) suddenly turn over the checks to respondent Atty. de Guzman who is no longer his lawyer? x x x."

Considering that: (1) the stipulation on payment for legal services appears unconscionable and unreasonable; and (2) Atty. Gil de Guzman was dismissed for justifiable cause, the amount due to the lawyer should be fixed on a quantum meruit (*Mambulao Lumber Co. v. Philippine national Bank*, *supra*). This Court has stated that:

"In determining the compensation of an attorney, the following circumstances should be considered: the amount and character of the services rendered; the responsibility imposed; the amount of money or the value of the property affected by the controversy, or involved in the employment; the skill and experience called for in the performance of the service; the professional standing of the attorney; the results secured; and whether or

not the fee is contingent or absolute, it being a recognized rule that an attorney may properly charge a much larger fee when it is to be contingent than when it is not. (Delgado v. De la Rama, 43 Phil. 419) x x x."

Within the period of his employment by the petitioners, Atty. de Guzman filed the complaint, had the defendants Nam Kwang and Socea Bonna declared in default and finally, on his motion, the lower court issued the writ of attachment against MWSS. At the time of Atty. de Guzman's termination as counsel, the case had not gone through pre-trial.

Nothing in the case so far appears complicated and no extra ordinary skill was needed for Atty. de Guzman to accomplish what he had done in the case before he was terminated. There was no way of determining at that point how much the petitioners would recover or whether they would even recover anything.

For these services of Atty. de Guzman, we rule that he is entitled to the amount of P10,000.00 as reasonable attorney's compensation.

WHEREFORE, the petition is hereby GRANTED. The questioned decision of the then Intermediate Appellate Court is REVERSED and SET ASIDE. The petitioners are ordered to pay Atty. Gil de Guzman the amount of TEN THOUSAND PESOS (P10,000.00) as payment for his legal services in Civil Case No. SM-1208.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Feliciano, JJ., concur.

Paras, J., no part

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