

PROVINCE OF CEBU, PETITIONER, VS. HONORABLE INTERMEDIATE APPELLATE COURT AND ATTY. PABLO P. GARCIA, RESPONDENTS.*G.R. No. 72841. January 29, 1987*

Ponente: GUTIERREZ, JR., J.

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This is a petition to review the decision of the respondent Intermediate Appellate Court in A.C. G.R. CV No. 66502 entitled "Governor Rene Espina, et. al. v. Mayor Sergio Osmena, Jr., et. al., Atty. Pablo P. Garcia v. Province of Cebu"[1] affirming with modification the order of the Court of First Instance of Cebu, Branch VII, granting respondent Pablo P. Garcia's claim for compensation for services rendered as counsel in behalf of the respondent Province of Cebu.

The facts of the case are not in dispute. On February 4, 1964, while then incumbent Governor Rene Espina was on official business in Manila, the Vice-Governor, Priscillano Almendras and three (3) members of the Provincial Board enacted Resolution No. 188, donating to the City of Cebu 210 province-owned lots all located in the City of Cebu, with an aggregate area of over 380 hectares, and authorizing the Vice-Governor to sign the deed of donation on behalf of the province. The deed of donation was immediately executed in behalf of the Province of Cebu by Vice-Governor Almendras and accepted in behalf of the City of Cebu by Mayor Sergio Osmena, Jr. The document of donation was prepared and notarized by a private lawyer. The donation was later approved by the Office of the President through Executive Secretary Juan Cancio.

According to the questioned deed of donation the lots donated were to be sold by the City of Cebu to raise funds that would be used to finance its public improvement projects. The City of Cebu was given a period of one (1) year from August 15, 1964 within which to dispose of the donated lots.

Upon his return from Manila, Governor Espina denounced as illegal and immoral the action of his colleagues in donating practically all the patrimonial property of the province of Cebu, considering that the latter's income was less than one-fourth (¼) of that of the City of Cebu.

To prevent the sale or disposition of the lots, the officers and members of the Cebu Mayor's League (in behalf of their respective municipalities) along with some taxpayers, including Atty. Garcia, filed a case seeking to have the donation declared illegal, null, and void. It was alleged in the complaint that the plaintiffs were filing it for and in behalf of the Province of Cebu in the nature of a derivative suit. Named defendants in the suit were the City of Cebu, City Mayor Sergio Osmena, Jr. and the Cebu provincial officials responsible for the donation of the province-owned lots. The case was docketed as Civil Case No. R-8669 of the Court of First Instance of Cebu and assigned to Branch VI thereof.

Defendants City of Cebu and City Mayor Osmena, Jr. filed a motion to dismiss the case on the ground that plaintiffs did not have the legal capacity to sue.

Subsequently, in an order, dated May, 1965, the court dismissed Case No. R-8669 on the ground that plaintiffs

were not the real parties in interest in the case. Plaintiffs filed a motion for reconsideration of the order of dismissal. This motion was denied by the Court.

Meanwhile, Cebu City Mayor Sergio Osmena, Jr. announced that he would borrow funds from the Philippine National Bank (PNB) and would use the donated lots as collaterals. In July, 1965, the City of Cebu advertised the sale of all the lots remaining unsold. Thereupon, Governor Espina, apprehensive that the lots would be irretrievably lost by the Province of Cebu, decided to go to court. He engaged the services of respondent Garcia in filing and prosecuting the case in his behalf and in behalf of the Province of Cebu.

Garcia filed the complaint for the annulment of the deed of donation with an application for the issuance of a writ of preliminary injunction, which application was granted on the same day, August 6, 1965.

The complaint was later amended to implead Cebu City Mayor Carlos P. Cuizon as additional defendant in view of Fiscal Numeriano Capangpangan's manifestation stating that on September 9, 1965, Sergio Osmena, Jr. filed his certificate of candidacy for senator, his position/office having been assumed by City Mayor Carlos P. Cuizon.

Sometime in 1972, the Provincial Board passed a resolution authorizing the Provincial Attorney, Alfredo G. Baguia, to enter his appearance for the Province of Cebu and for the incumbent Governor, Vice-Governor and members of the Provincial Board in this case.

On January 30, 1973, Alfredo G. Baguia, Provincial Attorney of the Province of Cebu, entered his appearance as additional counsel for the Province of Cebu and as counsel for Governor Osmundo Rama, Vice-Governor Salutario Fernandez and Board Members Leonardo Enad, Guillermo Legazpi, and Rizalina Migallos.

On January 31, 1973, Atty. Baguia filed a complaint in intervention stating that intervenors Province of Cebu and Provincial Board of Cebu were joining or uniting with original plaintiff, former Governor of Cebu, Rene Espina. They adopted his causes of action, claims, and position stated in the original complaint filed before the court on August 6, 1965.

On June 25, 1974, a compromise agreement was reached between the province of Cebu and the city of Cebu. On July 15, 1974, the court approved the compromise agreement and a decision was rendered on its basis.

On December 4, 1974, the court issued an order directing the issuance of a writ of execution to implement the decision dated July 15, 1974, to wit:

"1. Ordering the City of Cebu to return and deliver to the Province of Cebu all the lots enumerated in the second paragraph hereof;

"2. Ordering the Province of Cebu to pay the amount of One Million Five Hundred Thousand Pesos (P1,500,000.00) to the City of Cebu for and in consideration of the return by the latter to the former of the aforesaid lots;

"3. Declaring the retention by the City of Cebu of the eleven (11) lots mentioned in paragraph No. 1 of the compromise agreement, namely, Lot Nos. 1141, 1261, 1268, 1269, 1272, 1273, 917, 646-A, 646-A-4-0 and 10107-C;

"4. Ordering the City of Cebu or the City Treasurer to turn over to the Province of Cebu the amount of P187,948.93 mentioned in Annex "A" of the defendants manifestation dated October 21, 1974;

"5. Declaring the City of Cebu and all its present and past officers completely free from liabilities to third persons in connection with the aforementioned lots, which liabilities if any, shall be assumed by the Province of Cebu;

"6. Ordering the Register of Deeds of the City of Cebu to cancel the certification of titles in the name of the City of Cebu covering the lots enumerated in the second paragraph of this order and to issue new ones in lieu thereof in the name of the Province of Cebu."

For services rendered in Civil Case No. 238-BC, CFI of Cebu, respondent Pablo P. Garcia filed through counsel a Notice of Attorney's Lien, dated April 14, 1975, praying that his statement of claim of attorney's lien in said case be entered upon the records thereof, pursuant to Section 37, Rule 138 of the Rules of Court.

To said notice, petitioner Province of Cebu filed through counsel, its opposition dated April 23, 1975, stating that the payment of attorney's fees and reimbursement of incidental expenses are not allowed by law and settled jurisprudence to be paid by the Province. A rejoinder to this opposition was filed by private respondent Garcia.

After hearing, the Court of First Instance of Cebu, then presided over by Judge Alfredo Marigomen, rendered judgment dated May 30, 1979, in favor of private respondent and against petitioner Province of Cebu, declaring that the former is entitled to recover attorney's fees on the basis of quantum meruit and fixing the amount thereof at P30,000.00.

Both parties appealed from the decision to the Court of Appeals. In the case of private respondent, however, he appealed only from that portion of the decision which fixed his attorney's fees at P30,000.00 instead of at 30% of the value of the properties involved in the litigation as stated in his original claim.

On October 18, 1985, the Intermediate Appellate Court rendered a decision affirming the findings and conclusions of the trial court that the private respondent is entitled to recover attorney's fees but fixing the amount of such fees at 5% of the market value of the properties involved in the litigation as of the date of the filing of the claim in 1975. The dispositive portion of the decision reads:

"WHEREFORE, except for the aforementioned modification that the compensation for the services rendered by the Claimant Atty. Pablo P. Garcia is fixed at five percent (5%) of the total fair market value of the lots in question, the order appealed from is hereby affirmed in all other respects."

Both parties went to the Supreme Court with private respondent questioning the fixing of his attorney's fees at 5% instead of 30% of the value of the properties in litigations as prayed for in his claims. However, the private respondent later withdrew his petition in G.R. No. 72818 with the following explanation:

"That after a long and serious reflection and reassessment of his position and intended course of action and, after seeking the views of his friends, petitioner has come to the definite conclusion that prosecuting his appeal would only result in further delay in the final disposition of his claim (it has been pending for the last 10 years — 4 in the CFI and 6 in the Court of Appeals, later Intermediate Appellate Court) and that it would be more prudent and practicable to accept in full the decision of the Intermediate Appellate Court."

Hence, only the petition of the Province of Cebu is pending before this Court.

The matter of representation of a municipality by a private attorney has been settled in *Ramos v. Court of Appeals* (108 SCRA 728). Collaboration of a private law firm with the fiscal and the municipal attorney is not allowed. Section 1683 of the Revised Administrative Code provides:

"Section 1683. Duty of fiscal to represent provinces and provincial subdivisions in litigation. — The provincial fiscal shall represent the province and any municipality, or municipal district thereof in any court, except in cases whereof original jurisdiction is vested in the Supreme Court or in cases where the municipality, or municipal district in question is a party adverse to the provincial government or to some other municipality, or municipal district in the same province. When the interests of a provincial government and of any political division thereof are opposed, the provincial fiscal shall act on behalf of the province."

"When the provincial fiscal is disqualified to serve any municipality or other political subdivision of a province, a special attorney may be employed by its council."

The above provision, complemented by Section 3 of the Local Autonomy Law, is clear in providing that only the provincial fiscal and the municipal attorney can represent a province or municipality in its lawsuits. The provision is mandatory. The municipality's authority to employ a private lawyer is expressly limited only to situations where the provincial fiscal is disqualified to represent it (*De Guia v. The Auditor General*, 44 SCRA 169; *Municipality of Bocaue, et al. v. Manotok*, 93 Phil. 173; *Enriquez, Sr., v. Honorable Gimenez*, 107 Phil. 932) as when he represents the province against a municipality.

The lawmaker, in requiring that the local government should be represented in its court cases by a government lawyer, like its municipal attorney and the provincial fiscal, intended that the local government should not be burdened with the expenses of hiring a private lawyer. The lawmaker also assumed that the interests of the municipal corporation would be best protected if a government lawyer handles its litigations. It is to be expected that the municipal attorney and the fiscal would be faithful and dedicated to the corporation's interests, and that, as civil service employees, they could be held accountable for any misconduct or dereliction of duty (See *Ramos v. Court of Appeals*, *supra*).

However, every rule is not without an exception, *Ibi quid generaliter conceditur; inest haec exceptio, si non aliquid sit contra jus fasque* (Where anything is granted generally, this exception is implied; that nothing shall be contrary to law and right). Indeed, equity, as well as the exceptional situation facing us in the case at bar, require a departure from the established rule.

The petitioner anchors its opposition to private respondent's claim for compensation on the grounds that the employment of claimant as counsel for the Province of Cebu by then Governor Rene Espina was unauthorized and violative of Sections 1681 to 1683 in relation to Section 1679 of the Revised Administrative Code and that the claim for attorney's fees is beyond the purview of Section 37, Rule 138 of the Rules of Court.

It is argued that Governor Espina was not authorized by the Provincial Board, through a board resolution, to employ Atty. Pablo P. Garcia as counsel of the Province of Cebu.

Admittedly, this is so.

However, the circumstances obtaining in the case at bar are such that the rule cannot be applied. The Provincial Board would never have given such authorization. The decision of the respondent court elucidates the matter thus:

"xxx The provisions of Sections 1681 to 1683 of the Revised Administrative Code contemplate a normal situation where the adverse party of the province is a third person as in the case of *Enriquez v. Auditor General*, 107 Phil. 932. In the present case, the controversy involved an intramural fight between the Provincial Governor on one hand and the members of the Provincial Board on the other hand. Obviously it is unthinkable for the Provincial Board to adopt a resolution authorizing the Governor to employ Atty. Garcia to act as counsel for the Province of Cebu for the purpose of filing and prosecuting a case against the members to the same Provincial Board. According to the claimant Atty. Garcia, how can Governor Espina be expected to secure authority from the Provincial Board to employ claimant as counsel for the Province of Cebu when the very officials from whom authority is to be sought are the same officials to be sued. It is simply impossible that the Vice-Governor and the members of the Provincial Board would pass a resolution authorizing Governor Espina to hire a lawyer to file a suit against themselves.

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"Under Section 2102 of the Revised Administrative Code it is the Provincial Board upon whom is vested the authority 'to direct, in its discretion, the bringing or defense of civil suits on behalf of the Provincial Governor _____. Considering that the members of the Provincial Board are the very ones involved in this case, they cannot be expected to direct the Provincial Fiscal the filing of the suit on behalf of the provincial government against themselves. Moreover, as argued by the claimant, even if the Provincial Fiscal should side with the Governor in the bringing of this suit, the Provincial Board whose members are made defendants in this case, can simply frustrate his efforts by directing him to dismiss the case or by refusing to appropriate funds for the expenses of the litigation.

"xxx Consequently, there could have been no occasion for the exercise by the Provincial Fiscal of his powers and duties since the members of the Provincial Board would not have directed him to file a suit against them."

A situation obtains, therefore, where the Provincial Governor, in behalf of the Province of Cebu, seeks redress against the very members of the body, that is, the Provincial Board, which, under the law, is to provide it with legal assistance. A strict application of the provisions of the Revised Administrative Code on the matter would deprive the plaintiffs in the court below of redress for a valid grievance. The provincial board authorization required by law to secure the services of special counsel becomes an impossibility. The decision of the respondent court is grounded in equity — a correction applied to law, where on account of the general comprehensiveness of the law, particular exceptions not being provided against, something is wanting to render it perfect.

It is also argued that the employment of claimant was violative of sections 1681 to 1683 of the Revised Administrative Code because the Provincial Fiscal who was the only competent official to file this case was not disqualified to act for the Province of Cebu.

Respondent counsel's representation of the Province of Cebu became necessary because of the Provincial Board's failure or refusal to direct the bringing of the action to recover the properties it had donated to the City of Cebu. The Board more effectively disqualified the Provincial Fiscal from representing the Province of Cebu when it directed the Fiscal to appear for its members in Civil Case No. R-8669 filed by Atty. Garcia, and others, to defend its actuation in passing and approving Provincial Board Resolution No. 186. The answer of the Provincial Fiscal on behalf of the Vice-Governor and the Provincial Board members filed in Civil Case No. R-8669, (Exhibit "K") upholds the validity and legality of the donation. How then could the Provincial Fiscal represent the Province of Cebu in the suit to recover the properties in question? How could Governor Espina be represented by the Provincial Fiscal or seek authorization from the Provincial Board to employ special counsel? *Nemo tenetur ad impossibile* (The law obliges no one to perform an impossibility). Neither could a prosecutor be designated by the Department of Justice. Malacanang had already approved the questioned donation.

Anent the question of liability for respondent counsel's services, the general rule that an attorney cannot recover his fees from one who did not employ him or authorize his employment, is subject to its own exception.

Until the contrary is clearly shown, an attorney is presumed to be acting under authority of the litigant whom he purports to represent (*Azotes v. Blanco*, 78 Phil. 739) His authority to appear for and represent petitioner in litigation, not having been questioned in the lower court, it will be presumed on appeal that counsel was properly authorized to file the complaint and appear for his client. (*Republic v. Philippine Resources Development Corporation*, 102 Phil. 960) Even where an attorney is employed by an unauthorized person to represent a client, the latter will be bound where it has knowledge of the fact that it is being represented by an attorney in a particular litigation and takes no prompt measure to repudiate the assumed authority. Such acquiescence in the employment of an attorney as occurred in this case is tantamount to ratification (*Tan Lua v. O'Brien*, 55 Phil. 53). The act of the successor provincial board and provincial officials in allowing respondent Atty. Pablo P. Garcia to

continue as counsel and in joining him in the suit led the counsel to believe his services were still necessary.

We apply a rule in the law of municipal corporations, "that a municipality may become obligated upon an implied contract to pay the reasonable value of the benefits accepted or appropriated by it as to which it has the general power to contract. The doctrine of implied municipal liability has been said to apply to all cases where money or other property of a party is received under such circumstances that the general law, independent of express contract implies an obligation upon the municipality to do justice with respect to the same." (38 Am. Jur. Sec. 515, p. 193):

"The obligation of a municipal corporation upon the doctrine of an implied contract does not connote an enforceable obligation. Some specific principle or situation of which equity takes cognizance must be the foundation of the claim. The principle of liability rests upon the theory that the obligation implied by law to pay does not originate in the unlawful contract, but arises from considerations outside it. The measure of recovery is the benefit received by the municipal corporation. The amount of the loan, the value of the property or services, or the compensation specified in the contract, is not the measure. If the price named in the invalid contract is shown to be entirely fair and reasonable not only in view of the labor done, but also in reference to the benefits conferred, it may be taken as the true measure of recovery."

The petitioner can not set up the plea that the contract was ultra vires and still retain benefits thereunder. Having regarded the contract as valid for purposes of reaping some benefits, the petitioner is estopped to question its validity for the purposes of denying answerability.

The trial court discussed the services of respondent Garcia as follows:

"xxx Thus because of his effort in the filing of this case and in securing the issuance of the injunction preventing the City of Cebu and Sergio Osmena, Jr., from selling or disposing the lots to third parties, on the part of the members of the Provincial Board from extending the date of the automatic reversion beyond August 15, 1965, on the part of the Register of Deeds — from effecting the transfer of title of any of the donated lots to any vendee or transferee, the disposition of these lots by the City of Cebu to third parties was frustrated and thus: saved these lots for their eventual recovery by the province of Cebu."

Actually it was Governor Espina who filed the case against Cebu City and Mayor Osmena. Garcia just happened to be the lawyer. Still Atty. Garcia is entitled to compensation. To deny private respondent compensation for his professional services would amount to a deprivation of property without due process of law (*Cristobal v. Employees' Compensation Commission*, 103 SCRA 329).

The petitioner alleges that although they do not deny Atty. Garcia's services for Governor Espina (who ceased to be such Governor of Cebu on September 13, 1969) and the original plaintiffs in the case, "it cannot be said with candor and fairness that were it not for his services the lots would have already been lost to the province forever, because the donation itself he was trying to enjoin and annul in said case was subject to a reversion clause under which lots remaining undisposed of by the City as of August 15, 1965 automatically reverted to the province and only about 17 lots were disposed of by August 15, 1965." We quote respondent counsel's comment with approval:

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"While it is true that the donation was subject to a reversion clause, the same clause gave the Provincial Board the discretion to extend the period of reversion beyond August 15, 1965 (see paragraph 3 of donation).

"With the known predisposition of the majority of the members of the Provincial Board, there would have been

no impediment to the extension of the reversion date to beyond August 15, 1965. Once the date of reversion is extended, the disposition of all the donated lots would be only a matter of course."

We have carefully reviewed the records of this case and conclude that 30% or even 5% of properties already worth P120,000,000.00 in 1979 as compensation for the private respondent's services is simply out of the question. The case handled by Atty. Garcia was decided on the basis of a compromise agreement where he no longer participated. The decision was rendered after pre-trial and without any hearing on the merits.

The factual findings and applicable law in this petition are accurately discussed in the exhaustive and well-written Order of then Trial Judge, now Court of Appeals Justice Alfredo Marigomen. We agree with his determination of reasonable fees for the private lawyer on the basis of quantum meruit. The trial court fixed the compensation at P30,000.00 and ordered reimbursement of actual expenses in the amount of P289.43.

WHEREFORE, the questioned October 18, 1985 decision of the Intermediate Appellate Court is set aside. The Order of the Trial Court dated May 30, 1979 is REINSTATED.

SO ORDERED.

Fernan, (Chairman), Alampay, Paras, and Padilla, JJ., concur.

Bidin, J., no part.

[1] The decision was penned by Justice Marcelino R. Veloso with Justices Porfirio V. Sison, Abdulwahid Bidin, and Ramon B. Britanico concurring.

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