

DONALD DEE, PETITIONER, VS. COURT OF APPEALS AND AMELITO MUTUC, RESPONDENTS.*G.R. No. 77439. August 24, 1989*

Ponente: REGALADO, J.

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Petitioner assails the resolution of respondent court, dated February 12, 1987, reinstating its decision promulgated on May 9, 1986 in AC-G.R. CV No. 04242 wherein it affirmed the decision of the trial court holding that the services rendered by private respondent was on a professional, and not on a gratis et amore, basis and ordering petitioner to pay private respondent the sum of P50,000.00 as the balance of the latter's legal fee therefor.

The records show that sometime in January, 1981, petitioner and his father went to the residence of private respondent, accompanied by the latter's cousin, to seek his advice regarding the problem of the alleged indebtedness of petitioner's brother, Dewey Dee, to Caesar's Palace, a well-known gambling casino at Las Vegas, Nevada, U.S.A. Petitioner's father was apprehensive over the safety of his son, Dewey, having heard of a link between the mafia and Caesar's Palace and the possibility that his son may be harmed at the instance of the latter.[1]

Private respondent assured petitioner and his father that he would inquire into the matter, after which his services were reportedly contracted for P100,000.00. From his residence, private respondent called up Caesar's Palace and, thereafter, several long distance telephone calls and two trips to Las Vegas by him elicited the information that Dewey Dee's outstanding account was around \$1,000,000.00. Further investigations, however, revealed that said account had actually been incurred by Ramon Sy, with Dewey Dee merely signing for the chits. Private respondent communicated said information to petitioner's father and also assured him that Caesar's Palace was not in any way linked to the mafia.[2]

In June, 1981, private respondent personally talked with the president of Caesar's Palace at Las Vegas, Nevada. He advised the president that for the sake and in the interest of the casino it would be better to make Ramon Sy answer for the indebtedness. The president told him that if he could convince Ramon Sy to acknowledge the obligation, Dewey Dee would be exculpated from liability for the account. Upon private respondent's return to Manila, he conferred with Ramon Sy and the latter was convinced to acknowledge the indebtedness. In August, 1981, private respondent brought to Caesar's Palace the letter of Ramon Sy owning the debt and asking for a discount. Thereafter, the account of Dewey Dee was cleared and the casino never bothered him.[3]

Having thus settled the account of petitioner's brother, private respondent sent several demand letters to petitioner demanding the balance of P50,000.00 as attorney's fees. Petitioner, however, ignored said letters. On October 4, 1982, private respondent filed a complaint against petitioner in the Regional Trial Court of Makati, Branch CXXXVI, for the collection of attorney's fees and refund of transport fare and other expenses.[4]

Private respondent claimed that petitioner formally engaged his services for a fee of P100,000.00 and that the services he rendered were professional services which a lawyer renders to a client. Petitioner, however, denied the

existence of any professional relationship of attorney and client between him and private respondent. He admits that he and his father visited private respondent for advice on the matter of Dewey Dee's gambling account. However, he insists that such visit was merely an informal one and that private respondent had not been specifically contracted to handle the problem. On the contrary, respondent Mutuc had allegedly volunteered his services "as a friend of defendant's family" to see what he could do about the situation. As for the P50,000.00 ineptly given to private respondent, petitioner claims that it was not in the nature of attorney's fees but merely "pocket money" solicited by the former for his trips to Las Vegas and the said amount of P50,000.00 was already sufficient remuneration for his strictly voluntary services.

After trial, the court a quo rendered judgment ordering herein petitioner to pay private respondent the sum of P50,000.00 with interest thereon at the legal rate from the filing of the complaint on October 4, 1982 and to pay the costs. All other claims therein of private respondent and the counterclaim of petitioner were dismissed.[5] On appeal, said judgment was affirmed by the then Intermediate Appellate Court on May 9, 1986.[6]

Petitioner, in due time, filed a motion for reconsideration contending that the Appellate Court overlooked two important and decisive factors, to wit: (1) At the time private respondent was ostensibly rendering services to petitioner and his father, he was actually working "in the interest" and "to the advantage" of Caesar's Palace of which he was an agent and a consultant, hence the interests of the casino and private respondent were united in their objective to collect from the debtor; and (2) Private respondent is not justified in claiming that he rendered legal services to petitioner and his father in view of the conflicting interests involved.

In its resolution of July 31, 1986, respondent court reconsidered its decision and held that the sum of P50,000.00 already paid by petitioner to private respondent was commensurate to the services he rendered, considering that at the time he was acting as counsel for petitioner he was also acting as the collecting agent and consultant of, and receiving compensation from, Caesar's Palace.[7] However, upon a motion for reconsideration thereafter filed by private respondent, the present respondent Court of Appeals issued another resolution, dated February 12, 1987, reinstating the aforesaid decision of May 9, 1986.[8]

Petitioner is now before us seeking a writ of certiorari to overturn the latter resolution.

It is necessary, however, to first clear the air of the questions arising from the change of stand of the First Civil Cases Division of the former Intermediate Appellate Court when, acting on the representations in petitioner's undated motion for reconsideration supposedly filed on May 28, 1986, it promulgated its July 31, 1986 resolution reconsidering the decision it had rendered in AC-G.R. CV No. 04242. Said resolution was, as earlier noted, set aside by the Twelfth Division of the reorganized Court of Appeals which, at the same time, reinstated the aforesaid decision.

Because of its clarificatory relevance to some issues belatedly raised by petitioner, which issues should have been disregarded[9] but were nevertheless auspiciously discussed therein, at the risk of seeming prolixity we quote hereunder the salient portions of the assailed resolution which demonstrate that it was not conceived in error.

"The reason for then IAC's action is that it deemed the P50,000.00 plaintiff-appellee had previously received from defendant-appellant as adequate compensation for the services rendered by him for defendant-appellant, considering that at the time plaintiff-appellee was acting as counsel for defendant-appellant, he was also acting as the collecting agent and consultant of, and receiving compensation from Caesar's Palace in Las Vegas, Nevada, the entity with whom defendant-appellant was having a problem and for which he had engaged the services of plaintiff-appellee. The crux of the matter, therefore, is whether or not the evidence on record justifies this finding of the IAC.

"Plaintiff-appellee maintains that his professional services to defendant-appellant were rendered between the

months of July and September of 1981, while his employment as collection agent and consultant of Caesar's Palace covered the period from December 1981 to October 1982. This positive testimony of plaintiff-appellee, however, was disregarded by the IAC for the following reasons:

"1. In August 1983, plaintiff-appellee testified that he was a representative of Caesar's Palace in the Philippines 'about two or three years ago.' From this the IAC concluded that the period covers the time plaintiff-appellee rendered professional services to defendant-appellant.

"We do not think that IAC's conclusion is necessarily correct. When plaintiff-appellee gave the period 'about two or three years ago,' he was merely stating an approximation. Considering that plaintiff-appellee was testifying in August 1983, and his employment with Caesar's Palace began in December 1981, the stated difference of two years is relatively correct. x x x

"2. The plaintiff-appellee had testified that he was working 'for the sake,' 'in the interest,' and 'to the advantage' of Caesar's Palace. x x x

"We detect nothing from the above which would support IAC's conclusion that plaintiff-appellee was then in the employ of Caesar's Palace. What is gathered is that plaintiff-appellee was simply fulfilling a condition which plaintiff-appellee had proposed to, and was accepted by, Caesar's Palace, for the release of Dewey Dee from his obligation to Caesar's Palace.

"3. Caesar's Palace would not have listened to, and acted upon, the advice of plaintiff-appellee if he were no longer its consultant and alter ego.

"Why not? We are witnesses to many successful negotiations between contending parties whose representing lawyers were not and were never in the employ of the opposite party. The art of negotiation is precisely one of the essential tools of a good practitioner, and mastery of the art takes into account the circumstance that one may be negotiating, among others, with a person who may not only be a complete stranger but antagonistic as well. The fact that plaintiff-appellee was able to secure a favorable concession from Caesar's Palace for defendant-appellant does not justify the conclusion that it could have been secured only because of plaintiff-appellee's professional relationship with Caesar's Palace. It could have been attributable more to plaintiff-appellee's stature as a former ambassador of the Philippines to the United States, his personality, and his negotiating technique.

"Assuming, however, that plaintiff-appellee was employed by Caesar's Palace during the time that he was rendering professional services for defendant-appellant, this would not automatically mean the denial of additional attorney's fees to plaintiff-appellee. The main reason why the IAC denied plaintiff-appellee additional compensation was because the latter was allegedly receiving compensation from Caesar's Palace, and, therefore, the amount of P50,000.00 plaintiff-appellee had previously received from defendant-appellant is 'reasonable and commensurate.' This conclusion, however, can only be justified if the fact and amount of remuneration had been established. These were not proven at all. No proof was presented as to the nature of plaintiff-appellee's remuneration, and the mode or manner in which it was paid. x x x [10]

Both the lower court and the appellate court concur in their findings that there was a lawyer-client relationship between petitioner and private respondent Mutuc. We find no reason to interfere with this factual finding. There may be instances when there is doubt as to whether an attorney-client relationship has been created. The issue may be raised in the trial court, but once the trial court and the Court of Appeals have found that there was such a relationship the Supreme Court cannot disturb such finding of fact,[11] absent cogent reasons therefor.

The puerile claim is advanced that there was no attorney-client relationship between petitioner and private respondent for lack of a written contract to that effect. The absence of a written contract will not preclude the finding that there was a professional relationship which merits attorney's fees for professional services rendered. Documentary formalism is not an essential element in the employment of an attorney; the contract may be express

or implied. To establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession. An acceptance of the relation is implied on the part of the attorney from his acting on behalf of his client in pursuance of a request from the latter.[12]

There is no question that professional services were actually rendered by private respondent to petitioner and his family. Through his efforts, the account of petitioner's brother, Dewey Dee, with Caesar's Palace was assumed by Ramon Sy and petitioner and his family were further freed from the apprehension that Dewey might be harmed or even killed by the so-called mafia. For such services, respondent Mutuc is indubitably entitled to receive a reasonable compensation and this right cannot be occluded by petitioner's pretension that at the time private respondent rendered such services to petitioner and his family, the former was also the Philippine consultant of Caesar's Palace.

On the first aspect, the evidence of record shows that the services of respondent Mutuc were engaged by the petitioner for the purposes hereinbefore discussed. The previous partial payments totalling P50,000.00 made by petitioner to respondent Mutuc and the tenor of the demand letters sent by said private respondent to petitioner, the receipt thereof being acknowledged by petitioner, ineluctably prove three facts, viz: that petitioner hired the services of private respondent Mutuc; that there was a prior agreement as to the amount of attorney's fees to be given to the latter; and there was still a balance due and payable on said fees. The duplicate-original copy of the initial receipt issued and signed in this connection by private respondent reads:

"RECEIVED from Mr. Donald Dee, for professional services rendered, the sum of THIRTY THOUSAND PESOS (P30,000.00) as partial payment, leaving a balance of SEVENTY THOUSAND PESOS (70,000.00), payable on demand.

"Makati, Metro Manila, July 25, 1981."[13]

Thereafter, several demand letters for payment of his fees, dated August 6, 1981, December 2, 1981, January 29, 1982, March 7, 1982, and September 7, 1982 were sent by private respondent to petitioner,[14] all to no avail.

On the second objection, aside from the facts stated in the aforequoted resolution of respondent Court of Appeals, it is also not completely accurate to judge private respondent's position by petitioner's assumption that the interests of Caesar's Palace were adverse to those of Dewey Dee. True, the casino was a creditor but that fact was not contested or opposed by Dewey Dee, since the latter, as verifications revealed, was not the debtor. Hence, private respondent's representations in behalf of petitioner were not in resistance to the casino's claim but were actually geared toward proving that fact by establishing the liability of the true debtor, Ramon Sy, from whom payment was ultimately and correctly exacted.[15]

Even assuming that the imputed conflict of interests obtained, private respondent's role therein was not ethically or legally indefensible. Generally, an attorney is prohibited from representing parties with contending positions. However, at a certain stage of the controversy before it reaches the court, a lawyer may represent conflicting interests with the consent of the parties.[16] A common representation may work to the advantage of said parties since a mutual lawyer, with honest motivations and impartially cognizant of the parties' disparate positions, may well be better situated to work out an acceptable settlement of their differences, being free of partisan inclinations and acting with the cooperation and confidence of said parties.

Here, even indulging petitioner in his theory that private respondent was during the period in question an agent of Caesar's Palace, petitioner was not unaware thereof, hence he actually consented to and cannot now decry the dual representation that he postulates. This knowledge he admits, thus:

"It is a fair question to ask why, of all the lawyers in the land, it was the private respondent who was singled

out by the petitioner's father for consultation in regard to an apparent problem, then pending in Caesar's Palace. The testimony of Arthur Alejandrino, cousin to private respondent, and the admission of the private respondent himself supply the answer. Alejandrino testified that private respondent was the representative of Caesar's Palace in the Philippines (p. 23, t.s.n., Nov. 29, 1983). Private respondent testified that he was such representative tasked by the casino to collect the gambling losses incurred by Filipinos in Las Vegas. (p. 5, t.s.n., Sept. 21, 1983)."[17]

A lawyer is entitled to have and receive the just and reasonable compensation for services rendered at the special instance and request of his client and as long as he is honestly and in good faith trying to serve and represent the interests of his client, the latter is bound to pay his just fees.[18]

WHEREFORE, the resolution of respondent Court of Appeals, dated February 12, 1987, reinstating its original decision of May 9, 1986 is hereby AFFIRMED, with costs against petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Petition, 4; Rollo, 9.

[2] Rollo, 9-10, 21-22.

[3] Rollo, 10.

[4] Civil Case No. 1736 (47992); Original Record, 1-4.

[5] Judge Ricardo J. Francisco, presiding; Original Record, 127-132.

[6] Penned by Presiding Justice Ramon G. Gaviola, Jr., Justices Ma. Rosario Quetulio-Losa and Leonor Ines Luciano concurring; First Civil Cases Division.

[7] Penned, likewise, by Presiding Justice Gaviola, Jr., with the concurrence of Justices Quetulio-Losa and Luciano of the same Division.

[8] Justice Luis A. Javellana, ponente, with whom concurred Justices Pedro A. Ramirez and Cecilio L. Pe; Twelfth Division.

[9] Sec. 18, Rule 46 and Sec. 7, Rule 51, Rules of Court; De la Santa vs. Court of Appeals, et al., 140 SCRA 44 (1985); Dihiansan, et al. vs. Court of Appeals, et al., 153 SCRA 712 (1987).

[10] Rollo, 52-55.

[11] Vda. de Reyes vs. Court of Appeals et al., 116 SCRA 607 (1982).

[12] See C.J.S., 848-849, and Hirach Bros. & Co. vs. R.E. Kennington Co., 88 A.L.R., 1, as cited in Hilado vs. Gutierrez David, et al., 84 Phil. 569 (1949).

[13] Exhibit S, Folder of Exhibits. While objected to as self-serving (Original Record, 102), the authenticity and due execution of this document was not definitively denied by petitioner in his testimony (TSN, Nov. 21, 1983, 20-21).

[14] Exhibits B, D, E, F, and G, *ibid*.

[15] Canon 6 of the Canons of Professional Ethics, then in force, provides: "Within the meaning of this canon, a

lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

[16] Canon 6, id.

[17] Memorandum of Petitioner, 5; Rollo, 88.

[18] De Guzman vs. Visayan Rapid Transit Co., Inc., et al., 68 Phil. 643 (1939).

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