

**WILFREDO D. LICUDAN AND CRISTINA LICUDAN-CAMPOS,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND ATTY.
TEODORO O. DOMALANTA, RESPONDENTS.**

G.R. No. 91958. January 24, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The practice of law is a profession rather than a trade. Courts must guard against the charging of unconscionable and excessive fees by lawyers for their services when engaged as counsel. Whether or not the award of attorney's fees in this case is reasonable, being in the nature of contingent fees, is the principal issue.

This petition for review on certiorari assails:

- 1) The Decision of the public respondent dated September 12, 1989 which dismissed the petitioners' appeal thereby upholding the reasonableness of the respondent lawyer's lien as attorney's fees over the properties of his clients; and
- 2) The Resolution of the public respondent dated January 30, 1990 which denied the petitioners' motion for reconsideration.

The grounds relied upon by the petitioners are as follows:

"The respondent Court, in upholding the entitlement of private respondent-attorney on the attorney's fees he claimed, decided the question in a manner not in accord with law or with the applicable decisions of this Honorable Tribunal.

"The respondent Court, in refusing to review and determine the propriety, reasonableness and validity of the attorney's fees claimed by the private respondent-attorney, departed from the usual course of judicial proceedings.

"The respondent Court, in failing to declare the attorney's fees claimed by the private respondent-attorney as unconscionable, excessive, unreasonable, immoral and unethical, decided the question in a way not in accord with law and with applicable decisions of this Honorable Tribunal." (Petition, pp. 12-13; Rollo, pp. 16-17)

The following are the antecedent facts pertinent to the case at bar:

The respondent lawyer was retained as counsel by his brother-in-law and sister, the now deceased petitioners' parents, spouses Aurelio and Felicidad Licudan. His services as counsel pertained to two related civil cases docketed as Civil Case No. Q-12254 for partition and Civil Case No. Q-28655 for a sum of money in connection with the redemption of the property subject matter of the two cases covered by Transfer Certificate of Title No. 818 of the Register of Deeds of Quezon City. In both cases, the respondent lawyer obtained a judgment in favor of his clients.

On August 13, 1979, the respondent lawyer filed a lobby for Attorney's Lien with Notification to his Clients

which substantially alleged that his clients executed two written contracts for professional services in his favor which provided that:

- "a) the undersigned counsel is entitled to own 97.5 square meters of the plaintiff's share of the lot in question.
 - b) The undersigned counsel shall have a usufructuary right for a period of ten (10) years of plaintiffs' share of the lot in question.
 - c) And that all damages accruing to plaintiffs to be paid by the defendant is for the undersigned counsel."
- (Annex "H" of the Petition, Rollo, p. 54)

On September 19, 1979, the trial court handling Civil Case No. Q-12254 ordered the annotation at the back of TCT No. 818 of the Register of Deeds of Quezon City of the respondent lawyer's Contract for Professional Services dated August 30, 1979 signed by petitioner Wifredo Licudan and Aurelio Licudan on his own behalf and on behalf of his daughter, petitioner Cristina Licudan-Campos. The said trial court's Order, being one of two Orders being essentially challenged in this petition, is reproduced below:

"Before the court for consideration is a 'Petition for Attorney's Lien filed by Atty. Teodoro D. Domalanta, counsel for the plaintiff, praying that his attorney's fees be annotated as a lien at the back of Transfer Certificate of Title No. 818 of the Register of Deeds of Quezon City, subject matter of this case.

For the protection of the plaintiffs, the court required the plaintiff Aurelio Licudan as well as his son to appear this morning. Plaintiff Aurelio Licudan together with his son Wilfredo Licudan, who appears to be intelligent and in fact he speaks (the) English language well, appeared. Both Aurelio and Wilfredo Licudan manifested that they have freely and voluntarily signed the Contract for Professional Services, dated August 30, 1979 and notarized before Notary Public Amado Garrovillas as Doc. No. 32, Page 8, Book No. XIX, Series of 1979.

Considering the manifestation of plaintiff, Aurelio Licudan and Alfredo (sic) Licudan that they have entered freely and voluntarily in the said contract of professional services, let the same be annotated at the back of TCT 818 of the Register of Deeds of Quezon City, upon payment of the required legal fees." (CA Decision, pp. 7-8; Rollo, pp. 36-37)

The Contract for Professional Services dated August 30, 1979 differs from the earlier contractual provisions in that it entitled the respondent lawyer to one-third (1/3) of the subject property or 90.5 square meters and provided for usufructuary rights over the entire lot in question in favor of the respondent lawyer's son, Teodoro M. Domalanta, Jr. for an agreed consideration. (Annex "J" of the Petition; Rollo, p. 59)

On July 25, 1985, the respondent lawyer filed a motion ex parte to amend the Order dated September 19, 1979 so as to conform with an additional professional fee covering 31 square meters more of the lot for services rendered in Civil Case No. Q-28655 as evidenced by a Deed of Absolute Sale dated May 1, 1983 executed by Aurelio Licudan in favor of the respondent lawyer.

On September 6, 1985, the trial court ordered the respondent lawyer to submit a subdivision plan in conformity with his attorney's fees contract under which one-third (1/3) of the property or 90.5 square meters was allotted to him.

On September 23, 1985, the respondent lawyer filed a motion for reconsideration praying for the amendment of the Order dated September 19, 1979 to conform with the Deed of Absolute Sale dated May 1, 1983 which was executed after the annotation of the original attorney's lien of 90.5 square meters.

On September 30, 1985, the trial court denied the motion on the ground that the respondent lawyer cannot collect attorney's fees for other cases in the action for partition.

On October 4, 1985, the respondent lawyer filed a second motion for reconsideration of the Order dated September 6, 1985 explaining that what he sought to be included in the Order dated September 19, 1979 is the additional attorney's fees for handling the redemption case which was but a mere offshoot of the partition case and further manifesting that the additional 31 square meters as compensation for the redemption case must be merged with the 90.5 square meters for the partition case to enable the said respondent lawyer to comply with the Order dated September 6, 1985 which directed him to submit a subdivision plan as required.

On October 21, 1985, the trial court issued the second Order being assailed in this petition. The said Order reads:

"Acting on the 'Second Motion for Reconsideration' filed by Atty. Teodoro Domalanta and finding the same to be justified, let an attorney's lien be annotated in the title of the property for 31 square meters as attorney's fees of said Atty. Teodoro Domalanta in addition to the original 90.5 square meters." (CA Decision, p. 8; Rollo, p. 37)

On August 22, 1986, more than ten (10) months after the Orders of September 6, 1985 and October 21, 1985 had become final and executory, the petitioners as substituted heirs of the respondent lawyers' deceased clients filed a motion to set aside the said orders on the ground that the award of professional fees covering 121.5 square meters of the 271.5 square meter lot is unconscionable and excessive.

After the respondent lawyer filed his Opposition to the above petitioners' motion, the lower court, on August 29, 1986, finding that the petitioners as substituted plaintiffs are not in full agreement with the respondent lawyer's claim for attorney's fees, set aside its Orders dated September 6, 1985 and October 21, 1985.

On September 16, 1986, the respondent lawyer filed a motion for reconsideration stressing the fact that the payment of the professional services was pursuant to a contract which could no longer be disturbed or set aside because it has already been implemented and had since then become final. This motion was denied on October 3, 1986.

On November 15, 1986, the respondent lawyer filed a motion to set aside the orders dated August 29, 1986 and October 3, 1986 reiterating his position that the Orders of September 6, 1985 and October 21, 1985 have become final and are already implemented. The respondent lawyer further asked for the modification of the October 21, 1985 Order to reflect 60.32 square meters instead of 31 square meters only since the stipulation in the Additional Contract for Professional Services entitled him to 60.32 square meters.

After the petitioners' Opposition to the said motion was filed, the trial court, on February 26, 1987, rendered an Order with the following dispositive portion:

"WHEREFORE, this Court has no alternative but to set aside its orders of 29 August 1986 and 3 October 1986 and declare its Orders of 19 September 1979 and 21 October 1985 irrevocably final and executory." (CA Decision, p. 5; Rollo, p. 34)

On appeal, the Court of Appeals ruled in favor of the respondent lawyer by dismissing the appeal and the prayed for writ of preliminary injunction. Their subsequent motion for reconsideration having been denied, the petitioners filed the instant petition.

The petitioners fault the respondent Court for its failure to exercise its inherent power to review and determine the propriety of the stipulated attorney's fees in favor of the respondent lawyer and accuse the respondent lawyer of having committed an unfair advantage or legal fraud by virtue of the Contract for Professional Services devised by him after the trial court awarded him attorney's fees for P1,000.00 only instead of respecting the trust and confidence of the highest level reposed on him considering the close blood and affinal relationship between him and his clients.

The petitioners contend that under the award for professional services, they may have won the case but would lose the entire property won in litigation to their uncle-lawyer. They would be totally deprived of their house and lot and the recovered damages considering that of the 271.5 square meters of the subject lot, the respondent lawyer is claiming 121.5 square meters and the remaining portion of 150 square meters would also go to attorney's fees since the said portion pertains to the lawyer's son by way of usufruct for ten (10) years.

The aforesaid submissions by the petitioners merit our consideration.

It is a well-entrenched rule that attorney's fees may be claimed in the very action in which the services in question have been rendered or as an incident of the main action. The fees may be properly adjudged after such litigation is terminated and the subject of recovery is at the disposition of the court (see *Camacho v. Court of Appeals*, 179 SCRA 604 [1989]; *Quirante v. Intermediate Appellate Court*, 169 SCRA 769 [1989]).

It is an equally deeply-rooted rule that contingent fees are not per se prohibited by law. They are sanctioned by Canon 13 of the Canons of Professional Ethics and Canon 20, Rule 20.01 of the recently promulgated Code of Professional Responsibility. However, as we have held in the case of *Tanhueco v. De Dumo* (172 SCRA 760 [1989]):

"x x x When it is shown that a contract for a contingent fee was obtained by undue influence exercised by the attorney upon his client or by any fraud or imposition, or that the compensation is clearly excessive, the Court must and will protect the aggrieved party. (*Ulanday v. Manila Railroad Co.*, 45 Phil. 540 [1923]; *Grey v. Insular Lumber Co.*, 97 Phil. 833 [1955]).

In the case at bar, the respondent lawyer caused the annotation of his attorney's fees lien in the main action for partition docketed as Civil Case No. Q-12254 on the basis of a Contract for Professional Services dated August 30, 1979. We find reversible error in the Court of Appeals' holding that:

"When the reasonableness of the appellee's lien as attorney's fees over the properties of his clients awarded to him by the trial court had not been questioned by the client, and the said orders had already become final and executory, the same could no longer be disturbed, not even by the court which rendered them (*Tañada v. Court of Appeals*, 139 SCRA 419)." (CA Decision p. 7; Rollo, p. 36)

On the contrary, we rule that the questioned Orders dated September 19, 1979 and October 21, 1985 cannot become final as they pertain to a contract for a contingent fee which is always subject to the supervision of this Court with regard to its reasonableness as unequivocally provided in Section 13 of the Canons of Professional Ethics which reads:

"13. Contingent Fees

A contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case including the risk and uncertainty of the compensation, but should always be subject to the supervision of a court, as to its reasonableness." (Underlining supplied).

There is no dispute in the instant case that the attorney's fees claimed by the respondent lawyer are in the nature of a contingent fee. There is nothing irregular about the execution of a written contract for professional services even after the termination of a case as long as it is based on a previous agreement on contingent fees by the parties concerned and as long as the said contract does not contain stipulations which are contrary to law, good morals, good customs, public policy or public order.

Although the Contract for Professional Services dated August 30, 1979 was apparently voluntarily signed by the late Aurelio Licudan for himself and on behalf of his daughter, petitioner Cristina Licudan--Campos and by the petitioner Wilfredo Licudan who both manifested in open court that they gave their free and willing consent to the

said contract, we cannot allow the said contract to stand as the law between the parties involved considering that the rule that in the presence of a contract for professional services duly executed by the parties thereto, the same becomes the law between the said parties is not absolute but admits an exception - that the stipulations therein are not contrary to law, good morals, good customs, public policy or public order (see *Philippine American Life Insurance Company v. Pineda*, 175 SCRA 416 [1989]; *Syjuco v. Court of Appeals*, 172 SCRA 111 [1989]).

Under Canon 20 of the Code of Professional Responsibility, a lawyer shall charge only fair and reasonable fees. In determining whether or not the lawyer's fees are fair and reasonable, Rule 20-01 of the same Code enumerates the factors to be considered in resolving the said issue. They are as follows:

- a) The time spent and the extent of the services rendered or required;
- b) The novelty and difficulty of the questions involved;
- c) The importance of the subject matter;
- d) The skill demanded;
- e) The probability of losing other employment as a result of acceptance of the proffered case;
- f) The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs;
- g) The amount involved in the controversy and the benefits resulting to the client from the service;
- h) The contingency or certainty of compensation;
- i) The character of the employment, whether occasional or established; and
- j) The professional standing of the lawyer."

A similar provision is contained under Section 24, Rule 138 of the Revised Rules of Court which partly states that:

"SEC. 24. Compensation of attorneys; agreement as to fees. - 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. x x x A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable."

All that the respondent lawyer handled for his deceased sister and brother-in-law was a simple case of partition which necessitated no special skill nor any unusual effort in its preparation. The subsequent case for redemption was admittedly but an offshoot of the partition case. Considering the close blood and affinal relationship between the respondent lawyer and his clients, there is no doubt that Atty. Domalanta took advantage of the situation to promote his own personal interests instead of protecting the legal interests of his clients. A careful perusal of the provisions of the contract for professional services in question readily shows that what the petitioners won was a pyrrhic victory on account of the fact that despite the successful turn-out of the partition case, they are now practically left with nothing of the whole subject lot won in the litigation. This is because aside from the 121.5 square meters awarded to Atty. Domalanta as attorney's fees, the said contract for professional services provides that the remaining portion shall pertain to the respondent lawyer's son by way of usufruct for ten (10) years. There should never be an instance where a lawyer gets as attorney's fees the entire property involved in the litigation. It is unconscionable for the victor in litigation to lose everything he won to the fees of his own lawyer.

The respondent lawyer's argument that it is not he but his son Teodoro M. Domalanta, Jr. who is claiming the usufructuary right over the remaining portion of the subject lot is inaccurate. The records show that the matter of

usufruct is tied up with this case since the basis for the said usufructuary right is the contract for professional services the reasonableness of which is being questioned in this petition. We find the ten-year usufruct over the subject lot part and parcel of the attorney's fees being claimed by the respondent lawyer.

In resolving the issue of reasonableness of the attorney's fees, we uphold the time-honoured legal maxim that a lawyer shall at all times uphold the integrity and dignity of the legal profession so that his basic ideal becomes one of rendering service and securing justice, not money-making. For the worst scenario that can ever happen to a client is to lose the litigated property to his lawyer in whom all trust and confidence were bestowed at the very inception of the legal controversy. We find the Contract for Professional Services dated August 30, 1979, unconscionable and unreasonable. The amount of P20,000.00 as attorney's fees, in lieu of the 121.5 square meters awarded to the respondent lawyer and the ten-year usufructuary right over the remaining portion of 150 square meters by the respondent lawyer's son, is, in the opinion of this Court, commensurate to the services rendered by Atty. Domalanta.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is GRANTED. The Court of Appeals' decision of September 12, 1989 is hereby REVERSED and SET ASIDE. Atty. Domalanta is awarded reasonable attorney's fees in the amount of P20,000.00.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, and Bidin, JJ., concur.

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