

## THIRD DIVISION

[ G.R. No. 124074, January 27, 1997 ]

**RESEARCH AND SERVICES REALTY, INC., PETITIONER, VS.  
COURT OF APPEALS AND MANUEL S. FONACIER, JR.,  
RESPONDENTS.  
D E C I S I O N**

**DAVIDE, JR., J.:**

This petition for review on certiorari under Rule 45 of the Rules of Court questions the propriety of the award for, and the reasonableness of the amount of, attorney's fees granted in favor of the private respondent by the Regional Trial Court (RTC) of Makati City, Branch 64,<sup>[1]</sup> in Civil Case No. 612, <sup>[2]</sup> which the Court of Appeals affirmed in its decision <sup>[3]</sup> of 31 March 1995 in CA-G.R. CV No. 44839.

The undisputed facts are as follows:

On 3 November 1969, the petitioner entered into a Joint Venture Agreement with Jose, Fidel, and Antonia Carreon. Under the said agreement, the petitioner undertook to develop, subdivide, administer, and promote the sale of the parcels of land owned by the Carreons. The proceeds of the sale of the lots were to be paid to the Philippine National Bank (PNB) for the landowner's mortgage obligation, and the net profits to be shared by the contracting parties on a 50-50 basis.

On 4 April 1983, the Carreons and a certain Patricio C. Sarile instituted before the RTC of Makati City an action against the petitioner for rescission of the Joint Venture Agreement. They prayed therein that pending the hearing of the case, a writ of preliminary injunction be issued to enjoin the petitioner from selling the lots subject of the agreement and that after hearing, the writ be made permanent; the agreement be rescinded; and the petitioner be ordered to pay the PNB the stipulated 15% per annum of the outstanding obligation and to pay the plaintiffs attorney's fees, exemplary damages, expenses of litigation, and costs of suit. This case was docketed as Civil Case No. 612 at Branch 64 of the said court.

In its answer, which was prepared and signed by Atty. Apolonio G. Reyes, the petitioner sought the denial of the writ of preliminary injunction, the dismissal of the complaint, and payment in its favor of (a) P10 million by way of actual damages; (b) P5 million by way of return to the petitioner of the amount advanced to the Carreons, payments to the PNB, and cost of the work on the subdivision; (c) P100,000.00 by way of exemplary damages; (d) any and all damages up to the amount of P4,638,420.00 which the petitioner may suffer under the terms of its Performance Bond in favor of the National Housing Authority; (e) P50,000.00 as attorney's fees; and (f) costs of suit.

On 9 April 1985, the petitioner engaged the services of private respondent Atty. Manuel S. Fonacier, Jr., <sup>[4]</sup> who then entered his appearance in Civil Case No. 612.

While the said case was pending, or on 24 July 1992, the petitioner, without the knowledge of the private respondent, entered into a Memorandum of Agreement (MOA)<sup>[5]</sup> with another land developer, Filstream International, Inc. (hereinafter Filstream). Under this MOA, the former assigned its rights and obligations under the Joint Venture Agreement in favor of the latter for a consideration of P28 million, payable within twenty-four months.

On 31 March 1993, the petitioner terminated the legal services of the private respondent. At the time the petitioner had already received P7 million from Filstream.

Upon knowing the existence of the MOA, the private respondent filed in Civil Case No. 612 an Urgent Motion to Direct Payment of Attorney's Fees and/or Register Attorney's Charging Lien praying, among other things, that the petitioner be ordered to pay him the sum of P700,000.00 as his contingent fee in the case.<sup>[6]</sup>

After hearing the motion, the trial court issued an order dated 11 October 1993 directing the petitioner to pay the private respondent the sum of P600,000.00 as attorney's fees on the basis of quantum meruit.

The trial court justified the award in this manner:

Insofar as material to the resolution of this Motion the records of this case show that movant Atty. Fonacier became the counsel of defendant Research in May 1985 while this case has been in progress. (Records, p.770). By this time also, the defendant Research has been enjoined by the Court from executing Contracts To Sell involving Saranay Homes Subdivision . . . . (Order dated December 3, 1984, Records pp. 625-626). However, the said counsel for defendant Research prepared for the latter various pleadings and represented it in Court (See Records after May 1985). Until his services were terminated the lawyer client relationship between Atty. Fonacier and Research was governed by a "contract" embodied in a letter addressed to Atty. Fonacier on April 19, 1985 [sic], the pertinent portion of which is reproduced below, as follows . . .

x x x

Soon after said letter, cases were referred to him including this case. In accordance with their agreement, there were instances that Research gave Atty. Fonacier ten (10%) percent of the amount received as the latter's attorney's fees pursuant to their agreement.

The instant case in which defendant is praying to be awarded attorney's fees, is an action for rescission of the Joint Venture Agreement between plaintiffs, Patricio Sarile, et al., as owners of a parcel of land and defendant Research & Service Realty, Inc., as developer of the land. At the time Atty. Fonacier entered his appearance as counsel for defendant Research, the Court has issued a preliminary injunction against Research. Thus all developmental and commercial activities of defendant had to stop. In this regard, Atty. Fonacier did spade work towards persuading

the plaintiffs to agree to the relaxation of the effects of the injunction to pave the way to a negotiation with a third-party, the Filstream. Atty. Fonancier's efforts were complemented by the efforts of his counterpart in the plaintiff's side. The third-party Filstream Inc., became the assignee of defendant Research. In this connection, a memorandum of agreement was entered into between them. By the terms of agreement, defendant Research will be receiving from the third party Filstream International, Inc. (Filstream) the following amount. . . .

x x x

The termination of the legal services of Atty. Fonacier was made definite on March 31, 1993 at which time the Memorandum of Agreement which Research entered into with Filstream, Inc., has already been effective. By this time also, defendant Research has already received the first two stipulated consideration of the agreement in the total sum of Six Million (P6,000,000.00). The necessary and legal consequence of said "Memorandum of Agreement" is the termination of the case insofar as plaintiff Patricio Sarile, et al. and defendant Research is concerned. The conclusion of the Memorandum of Agreement insofar as the cause of Research is concerned, is a legal victory for defendant Research. What could have been a loss in investment has been turned to a legal victory. Atty. Fonancier's effort contributed to defendant's victory, albeit outside the Court which would not have been possible without the legal maneuvering of a lawyer.

The dismissal of the case before this Court will come in a matter of time considering that plaintiffs, with the assumption by the third party, Filstream Inc., of what were supposed to be the obligations to them of defendant Research pursuant to their Joint Venture Agreement, is no longer interested in pursuing the rescission.

It is a matter of record that Atty. Fonacier is the last of the three lawyers who handled this case. Moreover it is Atty. Fonacier who contributed to the forging of the memorandum of agreement as testified to by Atty. Rogel Atienza one of the two retained counsels of plaintiffs.

Considering the importance which is attached to this case, certainly it would not be fair for Atty. Fonacier if his attorney's fees in this case would be equated only to the measly monthly allowance of (P800.00) Pesos and office space and other office facilities provided by defendant Research. Ten (10%) per cent of the amount which Research had received from Filstream at the time of the termination of a lawyer-client relationship between Atty. Fonacier and Research or P600,000.00 will be a just and equitable compensation for Atty. Fonancier's legal services, by way of quantum meruit (See *Cabildo v. Provincial Treasurer, Ilocos Norte, et al.*, 54 SCRA 26).<sup>[7]</sup>

In its Order<sup>[8]</sup> of 12 January 1994, the trial court denied the petitioner's motion for reconsideration of the above order.

The petitioner appealed to the Court of Appeals. In its Appellant's Brief,<sup>[9]</sup> the petitioner alleged that the private respondent was not entitled to attorney's fees under the retainer contract. Moreover, the private respondent did not exert any effort to amicably settle the case, nor was he even present during the negotiations for the settlement of the same. There was, therefore, no legal and factual justification for the private respondent's "fantastic and unreasonable claim for attorney's fees of P600,000.00."

On the other hand, the private respondent asserted that he was assured by the petitioner that non-collection cases were included in the contingent fee arrangement specified in the retainer contract wherein there was to be contingent compensation for any award arising from any lawsuit handled by him. According to him, Civil Case No. 612 was not the only "non-collection" case he handled for the petitioner. There was a "right of way" dispute where the petitioner was awarded P50,000.00, and the latter paid him P5,000.00, or 10% of the award as attorney's fees. He thus stressed that since under the memorandum of agreement the petitioner was to receive P28 million, he should be entitled to 10% thereof or P2.8 million as attorney's fees.

In its decision <sup>[10]</sup> of 31 March 1995, the Court of Appeals affirmed the challenged order of the trial court. It ratiocinated as follows:

Movant-appellee, on the other hand, correctly argues that it was the clear intention of appellant and counsel to compensate the latter for any legal services rendered by him to the former. Stated otherwise, it was never the intention of the parties in the instant appeal that counsel's services shall be free or to be rendered ex gratia.

xxx

It must in addition be underscored that the retainer contract of April 9, 1985 is the law that governs the relationship between appellant and appellee. In fact, the following provisions squarely and categorically supports the award of P600,000.00 to counsel, to wit:

Minimal allowance of P800 per month plus contingent fees and collection cases (case to case basis) aside from the attorney's fee recovered from any law suit.

(Paragraph 3, Retainer Contract)

In an American jurisprudence on this point cited in local annotation on the Canon of Professional Ethics, it was held that "if a lawyer renders valuable services to one who receives the benefits thereof, a promise to pay a reasonable value is presumed, unless such services were intended to be gratuitous" (Young vs. Buere, 78 Cal. Am. 127) In effect, to compensate a lawyer, we are faced with the pivotal question: "was the legal services intended to be free or not?" If it is not free, then, appellant must simply pay. The 10% contingent fee of the amount collected and/or to be collected in Civil Case No. 612 of the lower court, is, to Our mind fair and reasonable. As ruled by the Supreme Court in the case of Cosmopolitan Insurance Co. vs. Angel Reyes (G.R. L-20199, Nov. 23, 1965) 15% was even deemed reasonable. <sup>[11]</sup>

The petitioner filed a motion for reconsideration <sup>[12]</sup> on the ground among other things, that the decision is contrary to the evidence, as the trial court granted the

claim for attorney's fees based on quantum meruit, yet, the Court of Appeals granted the same on a contingent basis which it based on an erroneous quotation and comprehension of the following provision of the retainer contract:

Minimal allowance of P800.00 per month plus contingent fees on collection cases (case to case basis) aside from the attorney's fees recovered from any law suit. (underscoring ours) [13]

In its decision, the Court of Appeals substituted the word "on" after "contingent fees" with the word "and." Under the aforequoted paragraph, the private respondent was entitled to attorney's fees on contingent basis in collection cases only. In non collection cases, he was entitled only to the attorney's fees that might be recovered in the lawsuit. [14] Since Civil Case No. 612 is not a collection case but an action for rescission of a contract, then the aforequoted paragraph is not applicable as a basis for awarding attorney's fees to the private respondent. [15]

Finding nothing new in the motion for reconsideration, the Court of Appeals denied it in the resolution [16] of 15 February 1996.

The petitioner then came to us via this petition for review wherein it contends that

## **I**

RESPONDENT COURT OF APPEALS HAD DECIDED THE CASE NOT IN ACCORD WITH LAW AND THE UNDISPUTED FACTS OF THE CASE.

## **II**

RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING ON CONTINGENT BASIS RESPONDENT-APPELLEE'S ATTORNEY'S FEES ON THE BASIS OF A MEMORANDUM OF AGREEMENT IN WHICH HE HAD NO PARTICIPATION IN THE NEGOTIATION AND PREPARATION THEREOF.

## **III**

RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN AWARDING EXCESSIVE AND UNREASONABLE ATTORNEY'S FEES.

## **IV**

THE TRIAL COURT AND THE RESPONDENT COURT OF APPEALS HAVE NO JURISDICTION TO SATISFY ATTORNEY'S CHARGING LIEN ON A SUM OF MONEY THAT THE COURT HAD NO AUTHORITY TO DISPOSE OF AND OVER WHICH THE TRIAL COURT HAD MADE NO FINAL ADJUDICATION.

The petitioner's more important argument in support of the first error is the Court of Appeals' misquotation of the provision in the retainer contract regarding attorney's fees on contingent basis, which the petitioner had stressed in its motion for reconsideration. The petitioner maintains that under the contract, attorney's fees on contingent basis could only be awarded in collection cases, and Civil Case No. 612 is