



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 137680 **February 6, 2004**

CONCEPT PLACEMENT RESOURCES, INC., petitioner,
vs.
RICHARD V. FUNK, respondent.

DECISION

SANDOVAL-GUTIERREZ, J.:

This is a petition for review on *certiorari* assailing the Decision¹ dated February 18, 1999 of the Court of Appeals in CA-G.R. SP No. 46703, entitled "*Richard V. Funk vs. Hon. Santiago Ranada, Jr., Presiding Judge of RTC, Makati, Branch 137 and Concept Placement Resources, Inc.*"

The antecedent facts giving rise to the controversy at bar are as follows:

On June 25, 1994, Concept Placement Resources, Inc., petitioner, engaged the legal services of Atty. Richard V. Funk, respondent.

On July 1, 1994, the parties executed a retainer contract wherein they agreed that respondent will be paid regular retainer fee for various legal services, **except litigation**, quasi-judicial and administrative proceedings and similar actions. In these services, there will be separate billings.

Meanwhile, one Isidro A. Felosopo filed with the Philippine Overseas Employment Administration (POEA) a complaint for illegal dismissal against petitioner, docketed as POEA Case No. 94-08-2370. Petitioner referred this labor case to respondent for legal action.

Immediately, respondent, as counsel for petitioner, filed with the POEA its answer with counterclaim for ₱30,000.00 as damages and ₱60,000.00 as attorney's fees.

On March 1, 1995, while the labor case was still pending, petitioner terminated its retainer agreement with respondent. Nevertheless, respondent continued handling the case.

On October 30, 1995, the POEA rendered a Decision dismissing Felosopo's complaint with prejudice. The POEA, however, failed to rule on petitioner's counterclaim for damages and attorney's fees. Thereafter, the Decision became final and executory.

On December 8, 1995, respondent advised petitioner of the POEA's favorable Decision and requested payment of his attorney's fees.

In reply, petitioner rejected respondent's request for the following reasons: (1) the retainer agreement was terminated as early as March 1995; (2) there is no separate agreement for the handling of the labor case; and (3) the POEA did not rule on petitioner's counterclaim for attorney's fees. This prompted respondent to file with the Metropolitan Trial Court (MTC), Branch 67, Makati City a complaint for sum of money (attorney's fees) and damages against petitioner, docketed as Civil Case No. 51552.

During the pre-trial on September 3, 1996, the MTC, upon respondent's motion, declared petitioner as in default. Its motion for reconsideration was denied in an Order dated September 13, 1996. Forthwith, respondent was allowed to present his evidence *ex-parte*.

On October 27, 1996, the MTC rendered a Decision² ordering petitioner to pay respondent P50,000.00 as attorney's fees.

On appeal, the Regional Trial Court (RTC), Branch 137, Makati City, reversed the MTC Decision, holding *inter alia* that since the MTC, in the same Decision, did not resolve petitioner's counterclaim for attorney's fees, which constitutes *res judicata*, respondent is not entitled thereto.

Respondent filed a motion for reconsideration but was denied by the RTC in an Order³ dated December 29, 1997.

Thus, respondent filed with the Court of Appeals a petition for review ascribing to the RTC the following errors: (1) in reversing the MTC Decision on the ground of *res judicata*; and (2) in disregarding the compulsory counterclaim as basis for respondent's action for attorney's fees.

In due course, the Court of Appeals promulgated its Decision⁴ dated February 18, 1999 reversing the assailed RTC Decision and affirming the MTC Decision, thereby sustaining the award to respondent of his attorney's fees in the amount of P50,000.00.

Hence, this petition for review on *certiorari* wherein petitioner raises the following assignments of error:

"I. A QUESTION OF LAW IS BEING RAISED ON WHETHER AN ALLEGATION IN PLEADING DRAFTED BY COUNSEL ON BEHALF OF HIS CLIENT FILED IN A LABOR CASE CAN BE USED AS THE SOLE BASIS OF A COLLECTION SUIT BY COUNSEL IN THE ABSENCE OF ANY WRITTEN CONTRACT; AND,

"II. ON A QUESTION OF LAW ON WHETHER THERE IS A DISTINCTION BETWEEN THE PRINCIPLE OF *RES JUDICATA PER SE* FROM THE PRINCIPLE THAT THE DISMISSAL OF THE MAIN CASE CARRIES WITH IT THE DISMISSAL OF THE COMPULSORY COUNTERCLAIM AND SAID DISMISSAL CONSTITUTES *RES JUDICATA* WITH RESPECT TO THE COMPULSORY COUNTERCLAIM."⁵

The basic issue to be resolved is whether or not respondent is entitled to attorney's fees for assisting petitioner as counsel in the labor case.

While it is true that the retainer contract between the parties expired during the pendency of the said labor case, it does not follow that petitioner has no more obligation to pay respondent his attorney's fees. The Court of Appeals found that petitioner engaged the legal services of respondent and agreed to pay him accordingly, thus:

"Anent the first issue, the Petitioner resolutely avers that he and the Private Respondent had agreed on the latter paying him the amount of P60,000.00 by way of attorney's fees for his professional services as its counsel in POEA Case No. 94-08-2370 the Petitioner relying on his '*Retainer Agreement*' in tandem with the '*Compulsory Counterclaim*' of the Private Respondent to the complaint of Isidro Felosopo.

"We agree with the Petitioner's pose. It bears stressing that the '*Retainer Agreement*' of the Petitioner and the Private Respondent (Exhibit 'A') envisaged two (2) species of professional services of the Petitioner, namely, those professional services covered by the regular retainer fee and those covered by separate billings. Petitioner's services not covered by the regular retainer fee and, hence, subject to separate billing include:

'x x x

5. *Services not covered by the regular retainer fee and therefore, subject to separate billing:*

a) litigation, quasi-judicial proceedings, administrative investigation, and similar proceedings legal in nature;

x x x'

"x x x While admittedly, the Petitioner and the Private Respondent did not execute a written agreement on Petitioner's fees in said case apart from the '*Retainer Agreement*', however, the Private Respondent did categorically and unequivocally admit in its '*Compulsory Counterclaim*' embodied in its Answer to the Complaint, in POEA Case No. 94-08-2370, that it engaged the services of the Petitioner as its counsel 'For a fee in the amount of P60,000.00, Etc.':

'COMPULSORY COUNTERCLAIM

1. *Respondent reproduces herein by reference all the material allegations in the foregoing Answer.*
2. *As shown by the allegation in the Answer the complaint is factually and legally unfounded. To*

defend itself against this baseless suit, respondent suffered and continues to suffer actual damage in the amount of ₱30,000.00 and was compelled to hire the services of counsel for a fee in the amount of ₱60,000.00 plus ₱1,500.00 honorarium per appearance and litigation expenses in the amount of not less than ₱10,000.00 plus cost of

3. *suit.*" (Exhibit 'B-1': underscoring supplied)

Petitioner, in order to evade its obligation, invoked the principle of *res judicata*. Citing ***BA Finance Corporation vs. Co***⁶, petitioner contends that since the complaint in the labor case was dismissed, the counterclaim for attorney's fees was likewise dismissed. Consequently, the dismissal of the counterclaim has the effect of *res judicata* on respondent's complaint for attorney's fees. Necessarily, it must also be dismissed.

Petitioner's invocation of *res judicata*⁷ is utterly misplaced. The labor case and the instant complaint for collection of attorney's fees are entirely different. Obviously, in the two cases, there is no identity of parties, identity of subject matter, and identity of causes of action. Also, the Order in the labor case dismissing the complaint with prejudice is not on the merits.

Significantly, in ***German Marine Agencies, Inc. vs. NLRC***,⁸ we held that there must always be a factual basis for the award of attorney's fees. Here, since petitioner agreed to be represented by respondent as counsel in the labor case and to pay him his attorney's fees, it must abide with its agreement which has the force of law between them.⁹

We observe, however, that respondent did not encounter difficulty in representing petitioner. The complaint against it was dismissed with prejudice. All that respondent did was to prepare the answer with counterclaim and possibly petitioner's position paper. Considering respondent's limited legal services and the case involved is not complicated, the award of ₱50,000.00 as attorney's fees is a bit excessive. In ***First Metro Investment Corporation vs. Este del Sol Mountain Reserve, Inc.***,¹⁰ we ruled that courts are empowered to reduce the amount of attorney's fees if the same is iniquitous or unconscionable. Under the circumstances obtaining in this case, we consider the amount of ₱20,000.00 reasonable.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals is AFFIRMED with MODIFICATION in the sense that the award of ₱50,000.00 as attorney's fees to herein respondent is reduced to only ₱10,000.00. No costs.

SO ORDERED.

Vitug, (Chairman), Corona, and Carpio-Morales, JJ., concur.

Footnotes

¹ Annex "E" of the Petition for Review, Rollo at 25-40. Penned by Justice Romeo Callejo, Sr., now Justice of this Court, and concurred in by Justices Fermin A. Martin, Jr. and Mariano M. Umali, both retired.

² Annex "B" of the Petition for Review, Rollo at 18-19.

³ Annex "D", id. at 23-24.

⁴ Annex "E", id. at 25-40.

⁵ Rollo at 6-7.

⁶ G.R. No. 105751, June 30, 1993, 224 SCRA 163.

⁷ The elements of *res judicata* are:

(1) the former judgment must be final;

(2) it must have been rendered by a court having jurisdiction over the subject matter and the parties;

(3) it must be a judgment or order on the merits; and

(4) there must be between the first and second actions identity of parties, identity of subject matter, and identity of causes of action. (*Espiritu vs. Severina Realty Corporation*, G.R. No. 135920, October 26, 2001, 368 SCRA 400.)

⁸ G.R. No. 142049, January 30, 2001, 350 SCRA 629.

⁹ Article 1308, Civil Code; *Jespajo Realty Corporation vs. Court of Appeals*, G.R. No. 113626, September 27, 2002, 390 SCRA 27.

¹⁰ G.R. No. 141811, November 15, 2001, 369 SCRA 99.