

RECENT LEGISLATION:

Republic Act No. 636: Compensation of Discharged Attorney.

—R. A. No. 636 established a new doctrine in our jurisdiction, as follows: That in case there should be a contract between attorney and client which has been reduced to writing and the attorney should be dismissed without justifiable cause, the attorney shall be entitled to recover from the client the full compensation stipulated in the contract.¹ The enunciation of the above doctrine has for its purpose the protection of the members of the Philippine bar from the unscrupulous and unethical practices of numerous litigants.² This is accomplished by placing contracts between attorneys and clients on the same level as ordinary contracts in civil law.³

Prior to the passage of R.A. No. 636, an attorney dismissed under the circumstances provided in said Act would only be entitled to compensation on the basis of *quantum meruit* for such service as has already been performed by him, and a stipulation in the written contract between him and his client to the effect that if he is dismissed before the service is completed the stipulated fee shall become at once due and payable in full will be unavailing in so far as it would secure to the attorney anything more than compensation

¹ "A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. For the payment of such compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgments, rendered in the case wherein his services had been retained by the client." (Sec. 1, par. 3, R.A. No. 636.)

² ". . . It is the common general experience of members of the bar that unscrupulous persons, in expectation of litigation, or having an actual case in court, retain the services of an attorney just to place him under ethical obligations and deprive the adverse party of his services. Once this purpose has been achieved by the actual intervention of the attorney concerned, the latter is summarily dismissed on the basis of *quantum meruit*. The attorney is thus prejudiced in two ways: not only because he has been fraudulently induced to devote his time and talent to the service of a client who has no intention of utilizing him, but also because he is effectively estopped from making him available to the adverse party . . ." (Explanatory Note, Senate Bill No. 90).

³ "This Act declares that the liberty of the client to dismiss his attorney without cause, does not entitle him to evade his just liabilities for breach of contract, and places such contract between client and attorney on the same national basis as ordinary contracts in civil law." (Explanatory Note, Senate Bill No. 90). See also the sponsorship speech of Senator Garcia to the same effect, Senate Diario No. 53, p. 51.

on the *quantum meruit* basis for the services actually rendered.⁴ It is clear that R.A. No. 636 abrogates this doctrine. This makes the principle in our jurisdiction the same as that held by the weight of authority in the United States.⁵

Apparently, R.A. No. 636 extends the scope of the application of Sec. 22, Rule 127, that "a written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable." For now, under R.A. No. 636, not only will the amount of compensation be that which is provided for in the contract if the services have been completed as stipulated, but also even if they were not when the attorney has been discharged without justifiable cause and the contract is in writing. But, of course, the courts may still ignore the contract and limit the recovery to reasonable compensation if the amount of the stipulated fee is found by the court to be unreasonable or unconscionable.⁶ However, it seems that in view of R.A. No. 636, even if it may seem that the compensation to which an attorney who has been discharged without justifiable cause should be entitled would be unreasonable or unconscionable considering the services he had already actually rendered (since such compensation would be the full amount provided for in the written contract) the court has to grant such an amount nevertheless. But actually, it may be said that the amount granted is not unreasonable or unconscionable since what is unrea-

⁴ *Reyes Cristobal v. Ocson*, 44 Phil. 489, 493. The decision in the above case is contrary to the weight of authority in the United States. The majority, however, justified its stand by contending that an examination of the U.S. cases will show that no reference is made to any statute or rule of law like that contained in Sec. 32 of the Code of Civil Procedure (now Sec. 24, Rule 127), recognizing the right of the client to dismiss his attorney. (pp. 494, 495).

Justice Malcolm in his dissent contended that the decision struck down, in effect, all contracts entered into by attorneys and clients. (p. 504).

⁵ In the United States two views have been enunciated, as follows:

(a) That the Compensation of an attorney who has been employed to perform certain services by a client in a contract when discharged without cause shall be limited upon a *quantum meruit*. (*Martin v. Camp*, L.R.A., 1917F, 402; *Teney v. Berger*, 45 Am. Rep. 263). However, this doctrine does not apply where the attorney has been employed under a general retainer for a fixed period. (*Greenberg v. Remick & Co.*, 129 N.E. 211);

(b) That in the absence of contract stipulations to the contrary, a client who discharges his attorney without good cause is liable for the entire contract price. (*Dorshimer vs. Herndon*, 153 N.W. 496; *Bartlett v. Odd-Fellow's Savings Bank*, 21 Pac. 743; *Schneinesohn v. Lemonek*, 95 N.E. 913; *Moyer v. Cantiney*, 42 N.W. 1060; *Thompson v. Stearns*, 234 SW 1059; *Teiser v. Barlow*, 192 Pac. 394; *Brodie v. Watkins*, 34 Am. Rep. 49).

The weight of authority in the United States favors the latter doctrine. (30 *Harvard Law Review*, 183; 20 *Col. Law Review*, 792; 6 *Corpus Juris*, 724; L.R.A. 1917F, 408).

⁶ Rule 127, Sec. 22, Rules of Court; *Bachrach v. Golingco*, 39 Phil. 138, 143; *Ulan-day v. Manila Railroad Co.*, 45 Phil. 540, 554; *Manila Trading & Supply Co. v. Tamaraw Plantation Co.* 47 Phil. 513, 524; *Pania v. Yangco*, 52 Phil. 499, 502; *La Urbana v. Villa Abrille*, 64 Phil. 578, 582.

sonable or unconscionable in the compensation of discharged attorneys under the circumstances provided for in R.A. No. 636 should be determined in the light of the services which he was bound or would have performed under the contract were he not discharged. Consequently, the courts even in cases falling under R.A. No. 636, may still limit the amount provided for in the contract if it appears that the compensation be unreasonable or unconscionable considering not what services the attorney has actually rendered, but that which he was bound to render under the contract.

The right of a client to dismiss his attorney at any time and substitute another in his place⁷ is reiterated.⁸ However, it may be said that it has now been limited in the sense that the client shall be bound to pay him the full compensation provided in a written contract between them in case the dismissal should be unjustified.⁹ And in order that this right of the attorney may be secured, he is given "for the payment of such compensation . . . a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgments, rendered in the cases wherein his services had been retained by the client."¹⁰ Such provision, though, seems to be quite superfluous in view of the provisions of Rule 127, Sec. 33, of the Rules of Court.

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⁷ Sec. 24, Rule 127, Rules of Court; *Greenberg v. Remick & Co.*, 129 N.E. 211.

⁸ Sec. 1, par. 3, R.A. No. 636. See Footnote No. 1.

⁹ *Ibid.*

¹⁰ *Ibid.*