

EN BANC

[A.C. No. 7389, July 02, 2019]

VANTAGE LIGHTING PHILIPPINES, INC., JOHN PAUL FAIRCLOUGH AND MA. CECILIA G. ROQUE, COMPLAINANTS, V. ATTY. JOSE A. DIÑO, JR., RESPONDENT.

[A.C. No. 10596, July 2, 2019]

ATTY. JOSE A. DIÑO, JR., COMPLAINANT, V. ATTYS. PARIS G. REAL AND SHERWIN G. REAL, RESPONDENTS.

D E C I S I O N

JARDELEZA, J.:

Before us are two disbarment complaints: one filed by Vantage Lighting Philippines Inc., (Vantage), its President John Paul Fairclough (Fairclough) and its Vice President for Finance and Administration Ma. Cecilia G. Roque (Roque) (collectively referred to as complainants) against Vantage's former counsel, Atty. Jose A. Diño, Jr. (Atty. Diño), docketed as A.C. No. 7389;^[1] and the other one filed by Atty. Diño against Vantage's present lawyers, Attys. Paris G. Real and Sherwin G. Real (Reals), docketed as A.C. No. 10596.^[2]

A.C. No. 7389

On January 2, 2007, complainants filed a verified disbarment complaint^[3] against Atty. Diño, which we referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

Complainants alleged that, on August 15, 2006, Atty. Diño and Vantage executed a Retainer's Agreement for purposes of instituting a complaint against PHPC Co. (PHPC) and Hitachi Plant Engineering Co. Ltd. (Hitachi), subject to the payment of the following professional fees:

1. Acceptance Fee in the amount of One Hundred Fifty Thousand Pesos (P150,000.00 + 12% VAT), payable in the following manner:
 - a.) P75,000.00 upon the signing of this Agreement; and
 - b.) P75,000.00 upon the filing of the Complaint in court.
2. Per pleading professional fee of Five Thousand Pesos (P5,000.00 + 12% VAT) with reference to major pleadings filed, i.e.. complaint, answer to counterclaim, reply, briefs or memorandum, etc.;
3. Per appearance fee of Two Thousand Five Hundred Pesos (P2,500.00 + 12% VAT) for each hearing or conference attended. For hearings or conferences outside of Metro Manila, the appearance fee shall be Three Thousand Five Hundred Pesos (P3,500.00, net of taxes), exclusive of transportation and lodging expenses if necessary;

4. Deposit for photocopying, t.s.n. and other incidental expenses and costs of litigation in the amount of Three Thousand Pesos (P3,000.00), subject to liquidation and replenishment; and
5. Success fee of One Hundred Fifty Thousand Pesos (P150,000.00 net of taxes) in the event of a favorable resolution before the lower court as a result of our legal efforts, whether by decision or compromise settlement.^[4]

As per their agreement, Vantage paid Atty. Diño P75,000.00 upon signing of the retainer.^[5]

The civil complaint^[6] against PHPC and Hitachi was filed on September 5, 2006 before the Regional Trial Court (RTC) of Parañaque City. On September 11, 2006, Atty. Diño called Roque informing her that Vantage had to pay P150,000.00 to the judge to whom the civil complaint of Vantage would be raffled for the issuance of a temporary restraining order (TRO).^[7]

Atty. Diño also texted Roque, saying that if Vantage is unable to give him the cash before 2:00 o'clock that same afternoon, Atty. Diño will just advance the P20,000.00 to the judge to whom the case would be raffled.^[8]

Later that same day, Atty. Diño informed Roque through a text message that the case was raffled to Judge Rolando How (Judge How). Thinking that the payment for the TRO is just a regular legal expense, Vantage agreed to reimburse the P20,000.00 to Atty. Diño. As it was then already past banking hours, Roque texted Atty. Diño that he will be reimbursed the P20,000.00 on the date of the hearing scheduled the following day. In reply, Atty. Diño told Roque that Vantage will have to prepare another P65,000.00 because the TRO might be issued after the hearing.^[9]

The September 12, 2006 hearing was ultimately reset to the following day. Vantage, thru a Mr. Mannix Franco, nevertheless gave Atty. Diño the amount of P20,000.00. Atty. Diño was silent as regards the P65,000.00.^[10]

On September 14, 2006, Roque texted Atty. Diño to ask about the status of the case and whether the TRO was going to be issued. She also told Atty. Diño that Vantage had already prepared the additional P65,000.00 that he asked for. In response, Atty. Diño texted Roque, "Yes awaiting it now I already paid 130k but that's my own lookout." Thereafter, at 2:16 in the afternoon of the same day, Atty. Diño texted Roque "pls ask ur messenger to stand by and be ready to personally pick up the tro at the RTC [*sic*]." After a few minutes, he again texted Roque "tro will be issued tom anyway that's my commitment. No expense on ur part without tro on hand."^[11]

On September 15, 2006, Atty. Diño texted Roque that if the TRO will not be issued on Monday, the deal with the judge is no longer valid and the P20,000.00 will be returned to Vantage.^[12] Three days later, he texted Roque again to say that "Fixer said judge will release order on Wednesday (September 20) I said no. Your 20k will be returned tomorrow. For your information."^[13]

In the morning of September 19, 2006 and not having received any news from Atty. Diño, Vantage re-deposited the P65,000.00 with the bank and sent its messenger to pick up the P20,000.00 which Atty. Diño promised to return. Atty. Diño, however, refused to return the same and declared that he would just apply the amount to his legal fees.^[14]

It appears that Atty. Diño continued to send more text messages to Roque, which the latter only got to read the following day, or on September 20, 2006. These messages read as follows:

1. "bring the 65k tom. 8:30 am tro already issued (sent at around 4:52 in the afternoon.);"
2. "exchange will be at brewsters cafe where we had coffee the other day 8:30 am (sent at around 5:05 in the afternoon);" and
3. "I will appreciate it if we start acting like professionals and honor our commitment. If your company does not want to pay the 65k, a simple yes or no will be fine. Thank you. (sent at around 6:21 in the evening)."^[15]

Roque replied to Atty. Diño, apologizing for not being able to promptly respond to his text messages the previous day. She also informed Atty. Diño that she will ask Vantage's personnel about the P65,000.00.^[16] At Roque's instructions, Vantage's accounting officer called Atty. Diño to inform him that the P65,000.00 he asked for was re-deposited after he intimated that no TRO would be issued. Atty. Diño thereafter called Roque in anger, threatening that they (Vantage) will be sorry if they fail to pay his fees and reimburse him the amount of P130,000.00 which he allegedly gave to the fixers as payment to Judge How for the issuance of the TRO. When Roque told Atty. Diño that she will have to clear the matter first with Vantage management, Atty. Difio reportedly went berserk.^[17]

Because of their misunderstanding, Atty. Diño withdrew as counsel for Vantage on September 21, 2006.^[18] The next day, he sent Vantage the following Billing Statement:

1. Balance of Acceptance Fee (<u>Due last 05 Sept. 2006</u>)	P75,000.00
2. Reimbursement of Mobilization and Representation Expenses (Due last 19 Sept. 2006)	130,000.00
3. Per Pleading Fee (P5,000.00 per pleading) Complaint, Sept. 5; Urgent Motion Sept. 18 Motion Sept. 20	15,000.00
4. Appearances (P2,500 per) Sept. 5, 12, 13, 18 & 20	12,500.00
5. Reimbursement of incidental expenses (under item 4 of the Contract) Sheriff's and Process Server's Fee	2,500.00
6. Success fee (under item 5 of the Contract) Considering the issuance of the TRO, this item will be billed separately upon the issuance of the Preliminary Injunction.	

TOTAL

P235,000.00^[19]

It also appears that Atty. Diño filed a number of cases against complainants in a span of two months from the date he sent the Billing Statement to Vantage, as follows:

1. On October 4, 2006, Atty. Diño filed a criminal complaint for estafa against Roque and Fairclough before the Office of the City Prosecutor in Parañaque City. In his complaint affidavit,^[20] Atty. Diño alleged:

3. Said respondents falsely pretended to the Complainant that he will be paid P150,000.00 as professional fee and P150,000.00 as success fee, plus per pleading and appearance fees, **PROVIDED**, that the Complainant first advance the amount of P150,000.00 as mobilization and representation expenses for the purpose of securing the TRO and Writ of Preliminary Injunction;^[21]
2. On October 20, 2006, Atty. Diño filed a collection suit for sum of money and damages^[22] against Roque in Civil Case No. 6175 in the amount of P50,000.00 before Branch 80 of the RTC in Muntinlupa City. The amount allegedly represented Atty. Diño's unpaid acceptance fees, billable hours, actual expenses incurred and success fee on the collection of accounts from the two debtors of Vantage and/or Roque;
3. On October 25, 2006, Atty. Diño filed a criminal complaint for grave oral defamation^[23] against Roque before the Office of the City Prosecutor in Muntinlupa City. Roque allegedly hurled defamatory language against Atty. Diño over the telephone while it was on speaker mode. This was allegedly heard by Atty. Diño's client;
4. On November 21, 2006, Atty. Diño filed a criminal complaint for libel^[24] against Roque before the Prosecutor's Office in Muntinlupa City. Atty. Diño alleged that Roque signed a letter dated October 13, 2006 containing a statement that Atty. Diño bribed Judge How. The unsealed letter was allegedly read by the office building security guard;
5. On November 28, 2006, Atty. Diño filed a criminal complaint for falsification of private document and use of falsified document^[25] against Roque and the Reals before the Prosecutor's Office in Muntinlupa City. Atty. Diño averred that Roque and the Reals introduced as evidence in court the letter^[26] dated November 15, 2006 addressed to the Bureau of Immigration (BI) with a purported signature of Atty. Diño. The letter sent to the BI requested for hold departure order/watch list against Fairclough and contained statements that Fairclough has a pending *estafa* case and had molested a child.^[27]

Complainants here assert that: (1) the suits and actions filed by Atty. Diño against them are clearly groundless and these acts of harassment are sufficient cause to disbar him from the legal profession for gross misconduct;^[28] (2) Atty. Diño violated Rule 20.04^[29] of the Code of Professional Responsibility when he filed several cases against complainants instead of settling his financial concerns with them;^[30] and

(3) Atty. Diño committed serious fraud, gross dishonesty, and gross misrepresentation when he accused the Reals of claiming that he (Diño) sent a letter to the BI claiming that Fairclough is the subject of an estafa case and a child molester.^[31] Complainants also claim damages on account of Atty. Diño's harassment suits.^[32]

Atty. Diño, in his verified comment,^[33] dismissed complainants' allegations as false and incredible.^[34] He denied bribing Judge How to secure the TRO^[35] claiming:

4. **Considering the high stakes involved necessitating an exceptionally urgent prayer for preliminary reliefs,** the Respondent meticulously informed and explained to both Roque and Vantage's Chief Officer John Fairclough (Fairclough) **the additional fees, expenses and costs of litigation that were necessary, i.e., mobilization expenses, filing fees, payment of sheriffs fees, representation expenses for collaborating lawyers who will be tasked to devote laborious man-hours in personally monitoring the progress of the Complaint, payment for additional staff, among others;**

5. The provision for additional fees, expenses and costs of litigation is explicit in Item No. 4 of the LSA;

6. Both Roque and Fairclough gave their solemn word of honor to the Respondent that, immediately upon the release of the TRO, he will be reimbursed for the additional fees, expenses and costs of litigation that would be incurred, capped at P150,000.00.^[36] (Emphasis supplied.)

Atty. Diño thereafter itemized the following receivables from Vantage:

64. In this complaint, the complainants furtively hid the Fact that despite demand, they have not paid to the Respondent's Law Firm the balance of the Acceptance Fee (P75,000.00 due last September 05, 2006), per pleading fees (total of P15,000.00) for pleadings actually filed and which pleadings the complainants were furnished copies of, per appearance fees (total of P12,500.00) for hearings/conferences at which the complainants and/or their agents were always present at, and **for additional expenses and costs of litigation (total of P130,000.00), for the following:**

- mobilization expenses;
- filing fees;
- representation expenses and professional fees for collaborating lawyers who devote laborious man-hours from September 05 up to 19, 2006 in personally monitoring the progress of the Complaint;
- payment for additional staff;
- photocopying and mailing expenses, among others.^[37] (Emphasis supplied.)

Atty. Diño also argued that complainants' allegations are affirmative defenses which should be brought in the fora where the cases against them are pending.^[38] He added that the cases he filed were not baseless as in fact the respective adjudicating bodies found reasonable grounds to continue with the proceedings therein.^[39]