

INTEGRATED CONSTRUCTION SERVICES, INC. AND ENGINEERING CONSTRUCTION, INC., PETITIONERS, VS. THE HONORABLE LORENZO RELOVA AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND J...

G.R. No. L-36424. July 31, 1975

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition for certiorari with a prayer for the issuance of a restraining order and/or writ of preliminary injunction filed on March 8, 1973 by the Integrated Construction Services, Inc. and the Engineering Construction, Inc., hereinafter to be referred to as petitioners, seeking to nullify a writ of preliminary mandatory injunction issued on January 9, 1973 by respondent Judge in Civil Case No. 80390, relative to the petition filed by respondent Atty. Juan T. David to record attorney's lien, ordering herein petitioners to deposit with the Clerk of Court the sum of P1,300,000.00 conditioned upon the filing by respondent Atty. Juan T. David of a bond in the sum of P50,000.00, the order issued on January 31, 1973 denying the motion for reconsideration as well as maintaining the aforesaid January 9, 1973 order, and the order dated March 1, 1973, denying petitioners' motion to suspend the enforcement of the aforesaid order of January 9, 1973.

On March 8, 1973, WE required respondents to file their answer and directed the issuance of a temporary restraining order against the respondent Judge (p. 93, Vol. I, rec). The temporary restraining order, issued on March 9, 1973, enjoined respondent Judge "(a) from enforcing and/or executing your orders dated January 9, 1973, your subsequent orders maintaining it, dated January 33, 1973 and March 1, 1973, issued in Civil Case No. 80390 entitled ' Integrated Construction Services, Inc. and Engineering Construction,. Inc., plaintiffs, versus National Waterworks and Sewerage Authority (now Metropolitan Waterworks and Sewerage System), defendant,' and (b) from further proceeding on the Petition to Record Attorney's Charging Lien filed in said court on September 18, 1972" (pp. 96-97, Vol. I rec).

Respondent Atty. Juan T. David filed his answer on March 30, 1973 (pp. 338-615, rec.). A day earlier, on March 29, 1973, he filed an ex-parte petition to dissolve the restraining order issued by the court (pp. 104-337, Vol. I, rec). On April 2, 1973, respondent Atty. Juan T. David filed a supplemental argument in support of his ex-parte petition to dissolve the restraining order (pp. 63 6-621, Vol. I, rec). In OUR resolution of April 5, 1973. WE required petitioners to comment on the said ex-parte petition (p. 622, Vol. I, rec.) and compliance from the petitioners came on April 28, 1973 (pp. 629-678. Vol. I. rec). Respondent Atty. Juan T. David was required to file a reply, which was filed on May 16, 1973 (pp. 738-760, Vol. II, rec.). A constancia was likewise filed by said respondent on even date (pp. 761-800, Vol. II, rec).

Earlier on May 8, 1973, respondent Atty. Juan T. David filed another pleading urging this Court to dissolve the temporary restraining order of March 9, 1973 and to hold petitioners accountable for the false allegations made in their verified petition of March 8, 1973 (pp. 682-722, Vol. I, rec). Petitioners filed on May 14, 1973, by way of

supplement to their comment of April 28, 1973, the memorandum and reply memorandum submitted by them before the Manila City Fiscal's Office (I.S. No. 73-6394-95), asserting that the same are directly relevant to respondent Atty. Juan T. David's claim that they (petitioners) made some allegedly "fake allegations" (pp. 724-735, Vol. II, rec.)

On May 17, 1973, WE resolved to defer consideration of the foregoing incidents until the case is decided on the merits and set the hearing of the case on July 30, 1973, at 9:30 A.M. (pp. 736-737, Vol. II, rec)

On June 16, 1973, respondent Juan T. David filed a motion for reconsideration of OUR resolution of May 17, 1973 deferring consideration of the incidents of the case until the case is decided on the merits, praying "(1) that the argument embodied in the reply to the petitioners' comment and the pleading supplemental thereto, and in this pleading, in support of the petition to dissolve the temporary restraining order, be taken into account in the resolution of this Motion for Reconsideration; (2) that the aforementioned Resolution deferring action on the petition to dissolve until the case is decided on the merits, be reconsidered and set aside, and the temporary restraining order be dissolved; (3) that, if this Honorable Court finds any justified impediment to the dissolution of the temporary restraining order, the same be considered a preliminary injunction, and the petitioners be required to post a bond of 1.3 million pesos, in lieu of said amount which was illegally withdrawn by them from the jurisdiction of the court a quo, to answer for damages which may be caused to the private respondent, if he is found by the Court to be entitled to said amount as his just fee, conformably to the provisions of Section 6, Rule 58 of the Rules of Court; and (4) that the respondents be accorded such other reliefs to which they may be entitled in law and equity" (pp. 810-859, Vol. II, rec). Petitioners were required to comment on the aforesaid motion (p. 863, Vol. II, rec). Comment was filed on July 23, 1973.

On July 30, 1973, respondent Atty. Juan T. David filed another constancia, praying that the facts recited therein as well as the legal and jurisprudential argument expressed also therein, be taken into account in the resolution of his petition to dissolve restraining order and his motion for reconsideration of the resolution of this Court deferring action on the former, until the case is decided on the merits (pp. 869-924, Vol. II, rec.)

At the hearing on July 30, 1973, petitioners, through counsel, moved and were granted fifteen (15) days to file a memorandum in lieu of oral argument; while respondent Atty. Juan T. David personally argued, was given ten (10) days to file a formal manifestation submitting copies of certified documents as additional exhibits, and was required to furnish a copy of the same to counsel for petitioners (p. 939, Vol. II, rec.)

On August 8, 1973, respondent Atty. Juan T. David filed an urgent motion for clarification of the scope of the temporary restraining order (pp. 944-954, Vol. II, rec.)

On August 10, 1973, respondent Atty. Juan T. David filed his offer of exhibits, attaching thereto certain documents with prior permission from this Court (pp. 957-1127, Vol. II, rec.)

Required to comment on the private respondent's pleading of August 8 and 10, 1973, petitioners filed their consolidated comment on September 17, 1973 (pp. 1149-1153, Vol. II, rec.)

On August 27, 1973, petitioners, pursuant to OUR resolution of July 30, 1973, filed their memorandum (pp. 1130-1142, Vol. II, rec.)

On November 14, 1973, respondent Atty. Juan T. David filed another constancia, which in effect reiterates his previous motion for clarification of the temporary restraining order, (pp. 1155-1177, Vol. II, rec). The aforesaid constancia was noted in OUR resolution of November 22, 1973 (p. 1181, Vol. II, rec).

On December 18, 1973, the case was deemed submitted for decision (p. 1183, Vol. II, rec.)

But respondent Atty. Juan T. David filed on January 24, 1974 a petition to resolve his motion to dissolve temporary restraining order and his motion for clarification (pp. 1184-1188, Vol. II, rec.)

Petitioners on February 11, 1974, asked leave of Court to submit a copy of the order of the Court of First Instance of Manila dated January 31, 1974, in Criminal Case No. 14343, dismissing respondent Atty. Juan T. David's perjury charge against the president of petitioner Engineering Construction, Inc. (pp. 119-13 98, Vol. II, rec), which copy was admitted in OUR resolution of February 20, 1974 (p. 1200, Vol. II, rec.)

On March 8, 1974, respondent Atty. Juan T. David filed a motion praying, among others, that the hypothetical admission by Rafael S. Panganiban of the truth of the facts alleged in the information by moving to dismiss the criminal case (No. 14343) in which he is the accused, exclusively on legal grounds, be considered as evidence of the falsity of the pertinent allegations in the verified answer with counterclaim in the instant case before US (pp. 1202-1252, Vol. II, rec). WE required petitioners to comment (p. 1254, Vol. II, rec), and compliance came on March 27, 1974, annexing thereto petitioners' comment dated and filed 25 March 1974 before this Court in G. R. No. L-38306, entitled "Juan T. David, petitioner, versus Hon. Savellano, et al, respondents," where herein private respondent Atty. Juan T. David's other arguments have been discussed (pp. 1258-1279, Vol. II, rec.)-Another comment was filed by counsel of petitioner Integrated Construction Services, Inc. on March 29, 1974 (pp. 1286-1287, Vol. II, rec.)

Again on March 27, 1974, respondent Atty. Juan T. David filed an ex-parte motion praying that his urgent motion for clarification of the scope of the temporary restraining order filed on August 8, 1973 be now resolved in the interest of elementary justice to which the private respondent is believed entitled under Section 37, Rule 138 of the Rules of Court (pp. 1281-1284, Vol. II, rec.)

And on May 2, 1974, respondent Juan T. David filed a pleading entitled "Memorandum of Authorities" (pp. 1289-1291, Vol. II, rec.)

The factual setting necessary to a clear understanding of the instant petition is disclosed by the records.

Herein petitioners are plaintiffs in Civil Case No. 80390 entitled "Integrated Construction Services, Inc. and Engineering Construction, Inc., plaintiffs, versus National Waterworks and Sewerage Authority (now Metropolitan Waterworks and Sewerage System), defendant" of the Court of First Instance of Manila, claiming damages amounting to P25,000,000.00 caused allegedly by the unilateral cancellation by NAWASA (now MWSS) of the contract between NAWASA and plaintiffs for the construction of the Bicti-Novaliches Aqueduct before the completion of said project, in violation of the terms thereof.

On September 9, 1972, the Court of First Instance of Manila, Branch II, rendered judgment directing the MWSS to pay to petitioners the sum of P13,880,950.20, with interest, in accordance with the award dated August 11, 1972 of the Board of Arbitrators, to which the case was referred by agreement of the parties.

Thereafter, or on September 18, 1972, respondent Juan T. David filed in the aforementioned civil case a petition to record attorney's charging lien in the total amount of P2,300,000.00, alleging therein, among other things, that his professional services had been engaged by therein plaintiffs for the recovery of damages from NAWASA (now MWSS) on a contingent basis based on the principle of quantum meruit, without any retainer fee or per diem, and that thereafter he rendered professional services as agreed upon. He therein prayed that a charging lien be ordered recorded in order to protect his right to collect his aforementioned professional fee.

As therein plaintiffs, herein petitioners filed an opposition alleging, among others, that herein respondent Atty. Juan T. David's professional services were engaged for only one specific assignment and that was to present a letter-claim to NAWASA (now MWSS) and to assist herein petitioners only in connection therewith; that for such

services herein petitioners agreed with herein respondent Atty. Juan T. David on a flat fee of P10,000.00, although the records show that the amount paid was P15,000.00 (Exh. N, pp. 356-357, 422-423, Vol. I, rec); that there was no agreement for any other fee, nor was respondent retained for any other assignment; that respondent's name was included as one of petitioner's counsel in the aforesaid civil case at his request, which acceded to by petitioners as a matter of courtesy to a counsel who had assisted them in the presentation of the claim before NAWASA (now MWSS); and that respondent Atty. David did not participate in securing the judgment in the said civil case.

In connection with his petition to record attorney's charging lien, respondent David filed on November 16, 1972 a motion for the issuance of a temporary restraining order or a writ of preliminary injunction to stop the MWSS from paying herein petitioners the sum of P2,300,000.00 out of the P13,188,950.00, until the respondent Court shall have fixed his contingent professional fee. After the MWSS filed a reply dated November 24, 1972 invoking Letter of Instruction No. 2 dated September 22, 1972 issued pursuant to Proclamation No. 1081, under which the Secretary of National Defense has taken over the management, control and operation of the MWSS, the respondent Court denied said motion of respondent David (Annex E, pp. 62-63, Vol. I, rec.)

On November 22, 1972, herein petitioners filed in Civil Case No. 80390 a pleading entitled "Dismissal of Counsel" stating therein that "the plaintiffs Integrated Construction Services, Inc. and Engineering Construction, Inc. hereby dismiss Atty. Juan T. David as their counsel in the above-entitled case, x x x pursuant to the second paragraph of Section 26 of Rule 138 of the Rules of Court, which does not require court approval, x x x without prejudice to Atty. David's pursuing in the above-entitled case his pending petition to record a charging lien, but thereby plaintiffs neither admit Atty. David's claim nor waive, withdraw or abandon their opposition and defenses thereto."

A motion was thereafter filed therein by herein petitioners asking for the deferment of the proceedings on the petition of respondent Atty. Juan T. David until after the latter shall have paid to the court filing fees in the sum of P4,500.00. Respondent Judge ruled that he would consider the petition as one to record attorney's lien only and nothing more.

On January 2, 1973, respondent Atty. Juan T. David filed a motion for the issuance of a writ of preliminary mandatory injunction alleging, among others, that herein petitioners had succeeded in securing the release, and took delivery of, the check representing the net amount of the judgment in the sum of over P13,000,000.00 in gross violation of his rights under Section 3, Rule 138, and that said right has been nullified by the said delivery of the check from MWSS, and that the restoration of the aforesaid right is only possible through the issuance of a preliminary mandatory injunction ordering the herein petitioners to deposit with the court the sum representing his attorney's lien and therefore prayed that herein petitioners be ordered to surrender the check for P13 million issued to them if the same is still in their possession, or, if the check had been encashed or otherwise deposited, that herein petitioners be ordered through a writ of preliminary mandatory injunction to deposit with the court the sum of P2,300,000.00.

Herein petitioners filed an opposition to the aforesaid motion for the issuance of a writ of preliminary mandatory injunction alleging mainly that there was no ground for the issuance of the same; because the deposit of the check or of any amount in court was not the relief or part of the relief prayed for by respondent David in his instant petition to record a charging lien, which, as earlier stated, was specifically clarified by the court to be limited only to the recording of a charging lien, and therefore did not fall under the first ground enumerated in Section 3, Rule 58 of the Rules of Court, which, out of the three grounds therein provided, is the only one that can be invoked for the granting of a preliminary mandatory injunction as distinguished from a preventive injunction which can be based on any one of the three grounds enumerated in said section; that respondent David has not shown any right to be protected by injunction, because despite the several hearings, the evidence presented by him had not

established that he is entitled to any attorney's fees other than what had already been paid to him; that his own evidence is contrary to the allegations of his petition, Annex A hereof, in that, for instance, although he alleged on page 1 of said petition that there was no retainer fee or per diem, his own Exhibit "N" shows that he charged a flat fee of P15,000.00 for services in the study and preparation of petitioners' claims against NAWASA and that his own witness had testified that said amount was already paid; that the evidence did not establish that respondent David had rendered services worth more than P15,000.00 already paid to him inasmuch as he admitted that he did not appear during the presentation of evidence before the NAWASA committee nor before the Arbitration Board and that he had no hand in the preparation of the memorandum for the plaintiffs and the comments on defendant's memorandum; that there was no extreme necessity to warrant issuance of mandatory injunction because respondent David has other remedies for the collection of his alleged fees, and there was no indication that herein petitioners are insolvent or are about to become insolvent so as to warrant their being required to put up a security or guaranty for respondent Atty. Juan T. David's alleged fees, there being no allegation whatsoever, much less any evidence, that plaintiffs are insolvent or have disposed of or attempted to dispose of their assets to frustrate any future execution thereon; and that finally, the injunction sought amounts to an attachment of petitioners' funds because it would require the deposit in court of either the P13 million check or the sum of P2,300,000.00 in the same manner as in the case of levy or attachment, without sufficient grounds to warrant an attachment of petitioners' funds.

On January 9, 1973, respondent Judge issued an order the pertinent portion of which states:

"x x x the Court hereby orders the plaintiffs to deposit with the Clerk of Court the sum of P1,300,000.00 upon the filing by petitioner of a bond in the sum of P50,000.00, subject to the approval of the Court, which will answer for damages the plaintiffs may suffer by reason of this order. This is without prejudice to the determination and resolution by the Court on the amount petitioner is entitled to receive as reasonable attorney's fees on the basis of quantum meruit."

A motion for reconsideration of the aforesaid order was filed on January 17, 1973 by petitioners herein alleging that the petition for the recording of an attorney's charging lien does not attach to property but is at most only a personal claim enforceable by a writ of execution (*Caiña Vda. de Peralta vs. Victoriano*, 105 Phil. 194, 197); that respondent David, as counsel under Sec. 37 of Rule 138, Rules of Court on attorney's charging lien, cannot have more rights than herein petitioners to the amount of the judgment; and that said motion for a writ of preliminary mandatory injunction is premised on an alleged irregularity in the payment by the defendant to the plaintiffs of the judgment amount of P13,000,000.00, an allegation that he has failed to prove and is contradicted by the record.

On January 31, 1973, respondent Judge denied the motion for reconsideration; thus,

"x x x Considering that in the case at bar the full amount of the judgment has been paid by the defendants unto plaintiffs and considering that there is the issue between petitioner and plaintiffs as to how much is his reasonable attorney's fees, it is but fair and just that the amount shall be deposited in court pending determination and resolution of attorney's fees on the basis of quantum meruit. Otherwise, what good is the lien if upon adjudication the same cannot be enforced because the charging lien has become moot and academic?"

Under date of February 6, 1973, petitioners filed a motion to suspend enforcement of the order to deposit dated January 9, 1973.

On March 1, 1973, respondent Judge issued an order denying the motion to suspend the order of deposit.

Hence, this petition.

WE rule that respondent court acted without or in excess of jurisdiction and/or with grave abuse of discretion in

issuing the order of January 9, 1973, granting the writ of preliminary mandatory injunction requiring herein petitioners to deposit the amount of P1,300,000.00 upon the filing of a P50,000.00 bond by respondent Atty. Juan T. David, and the subsequent orders maintaining it.

There is an imperative need to state some postulates on preliminary injunction.

It is a well-imbedded rule that injunction will not issue to protect a right not in esse and which may never arise (Castañeda, et al vs. Ago, et al, L-28546, 1975; Polcom vs. Bello, et al, Jan. 30, 1971, 37 SCRA 230, 240; Locsin vs. Climaco, Jan. 31, 1969, 26 SCRA 833; Angela Estate, Inc. vs. CFI, July 31, 1968, 24 SCRA 509; Bacolod-Murcia vs. Capitol, July 26, 1966, 17 SCRA 736).

As expounded by Justice Conrado Sanchez speaking for the COURT:

"By Section 1, Rule 58, 1964 Rules of Court, it is now expressly provided — though already long generally recognized — that a court, at any stage of an action prior to final judgment, may 'require the performance of a particular act, in which case it shall be known as a preliminary mandatory injunction.' But stock must be taken of the truism that, like preventive injunctions, it is but a provisional remedy to which parties may resort 'for the preservation or protection of their rights or interest, and for no other purpose, during the pendency of the principal action.'" More than this, as a mandatory injunction 'usually tends to do more than to maintain the status quo, it is generally improper to issue such an injunction prior to final hearing.' Per contra, it may issue 'in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is willful and unlawful invasion of plaintiffs right against his protests and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to re-establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation.' Indeed, 'the writ should not be denied the complainant when he makes out a clear case free from doubt and dispute.'" (Commissioner of Customs vs. Cloribel, et al., Jan. 31, 1967, 19 SCRA 244-245).

Elaborating, Justice Castro in behalf of the COURT, explains further the rationale of the principle, thus:

"The writ may be issued at any time after the commencement of an action and before judgment, when it is established that the plaintiff is entitled to the relief demanded and only when his complaint shows facts entitling him to such relief. This extraordinary writ is not designed to protect contingent or future rights. 'An injunction will not issue to protect a right not in esse and which may never arise or to restrain an act which does not give rise to a cause of action (32 C.J. pp. 34, 35)'. 'Injunction, like other equitable remedies, will issue only at the instance of a suitor who has sufficient interest or title in the right or property sought to be protected x x x. For the court to act, there must be an existing basis of facts affording a present right which is directly threatened by the act sought to be enjoined. An impending or threatened invasion of some legal right of the complainant, and some interest in preventing the wrong sought to be perpetrated must be shown. It is always a ground for denying injunction that the party seeking it has insufficient title or interest to sustain it, and no claim to the ultimate relief sought — in other words, that he shows no equity. Want of equity on the part of the plaintiff in attempting to use injunctive process of the court to enforce a mere barren right will justify the court in refusing the relief even though the defendant has little equity on his side. The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule, will not take cognizance of suits to establish title, and will not lend its preventive aid by injunction where the complainant's title or right is disputed. He must stand on the strength of his own right or title, rather than on the weakness of that claimed by his adversary' (28 American Jurisprudence, sec. 26, p. 517). (Italics ours). 'The possibility of irreparable damage, without proof of violation of an actually existing right, is no ground for an injunction, being a mere *damnum absque injuria*.'" (Angela Estate, Inc. vs. Court of First Instance of Negros Occidental, 24 SCRA 509-510, July 31, 1968).

Justice Arsenio Dizon for the COURT likewise stressed in *National Marketing Corporation vs. Cloribel* (22

SCRA 1033-1034, 1038, March 13, 1968) that:

"As is well known, a mandatory injunction which commands the performance of some specific act is regarded as of a more serious nature than a mere prohibitive injunction, the latter being intended generally to maintain the status quo only. While our courts, being both of law and equity, have jurisdiction to issue a mandatory writ, We have always held that its issuance could be justified only in clear cases that it is generally improper to issue it before final hearing because it tends to do more than to maintain the status quo; that it should be issued only where there is willful and unlawful invasion of plaintiff's right and that the latter's case is one free from doubt and dispute" (*Italics supplied*).

Up to the time the challenged order and writ were issued, respondent David has no clear right to the alleged contingent attorney's fee of P2,300,000.00; because the same is seriously disputed by petitioners who already paid him P15,000.00 for his professional services rendered before the case was filed in court and who assert that he has not participated at all in securing the judgment in their favor. Respondent David's claim is not in esse and may not arise at all.

Under the second and last sentence of Section 37 of Rule 138 of the Revised Rules of Court the right of respondent David to record his charging attorney's lien is limited to a judgment "which he has secured in a litigation for his client". But herein petitioners deny that respondent David has secured or participated in securing the money judgment in their favor. The trial court therefore must first determine from the evidence to be submitted by both parties whether he has a right to a charging lien as well as the amount of the same, before it can order the recording of such lien; and until there is such a determination by the court a quo, a writ of preliminary mandatory injunction cannot be issued.

As the jurisprudence on the matter emphasizes, this extraordinary writ will not issue before final hearing, if as in this case the right to the charging lien is not clear for it is disputed. The mandatory writ "is not designed to protect contingent and future rights."

Thus, where the contract between the client and the lawyer was contingent, WE ruled in *Grey vs. Insular Lumber Company* (97 Phil. 836-837) that:

"There is no question that the law protects a charging lien of Atty. Hilado and if and when duly established, would authorize its payment by the estate. But to do so, Atty. Hilado would first have to prove the contract for the contingent fee; and that it was, in his words 'unpaid, reasonable and just.' It is at the same time obvious that the other party, the legal representative of the estate should be heard so that she may agree to the claim for payment of the fee or oppose it on some legal ground. As said by this Court in the case of *Ulanday vs. Manila Railroad Company*, 45 Phil., 54:

'xxx Contingent fees are not prohibited in the Philippines, and since it is impliedly sanctioned by law 'should be under supervision of the court in order that clients may be protected from unjust charges.' (Canons of Professional Ethics, No. 13). Where it is shown that the contract for a contingent fee was obtained by any fraud or imposition, or that the imposition is so clearly excessive as to amount to extortion, the court will in a proper case protect the aggrieved party' [*Taylor vs. Bemiss* (1833), 110 U.S. 42].'" (*Italics supplied*).

The rule on contingent fee based on quantum meruit has been summarized in *Moran's Comments on the Rules of Court*, Vol. 6, 1970 edition, p. 271, as follows:

"x x x (I)n the absence of a specific contract, the filing of a lien for the reasonable value of legal services does not by itself legally ascertain and determine the amount of the lien, especially where the amount is contested. In such case, it devolves upon the attorney, upon application, usually to the court in the case wherein the judgment was rendered to both allege and prove that the amount claimed is unpaid, and that it is reasonable and just, and upon that question the client has the legal right to be heard (*Dahlke vs. Viña*, 51 Phil. 707).

Where the client claims that he had already paid the attorney's fees, the proper procedure is for the court to first ascertain if a full payment had been made as claimed before ordering the registration of the charging lien in favor of the attorney. A full dress trial where both parties should be heard is necessary for this purpose (*Candelario vs. Canizares*, 4 SCRA 738)." [Italics supplied].

A fortiori the questioned order directing the deposit of the amount of P1,300,000.00 is premature; because there is no order to record charging lien inasmuch as there is as yet no finding that respondent David has a right to the alleged contingent lawyer's fee as well as the amount thereof.

Moreover, the release of the amount of the judgment to herein petitioners was not arbitrary; because such order to release was issued after the denial by the respondent court of the previous motion filed on November 16, 1972 by herein respondent David for the issuance of a temporary restraining order or a writ of preliminary injunction to enjoin such payment (*Police Commission vs. Bello, et al.*, L-29959-60, Jan. 30, 1971; 37 SCRA, pp. 230, 236; *Commissioner of Customs vs. Cloribel, et al.*, supra; *Angeles Estate, Inc. vs. Court*, Supra; *NAMARCO vs. Cloribel*, supra).

Even on the premise that at the time of the issuance of the questioned order of preliminary mandatory injunction respondent Atty. Juan T. David had already an existing right to the said amount and that said right was violated, the issuance of a writ of preliminary mandatory injunction would still be vitiated by the absence of a showing that the non-issuance thereof would cause irreparable injury or damage to respondent David. As a matter of fact, as above stated, the court a quo denied respondent David's previous petition for a writ of preliminary injunction to enjoin NAWASA (now MWSS) from paying herein petitioners the amount of the judgment in the civil case to the extent of the amount of P2,300,000.00, the pretended equivalent of respondent Atty. JuanT. David's professional fee, on the ground that pursuant to the provisions of General Order No. 3, dated September 22, 1972 issued by the President of the Republic of the Philippines, it (court) has no jurisdiction (pp. 62-65, Vol. I, rec, Annex "E"). Respondent David did not challenge the correctness of said order. Consequently, payment was made without further objection on the part of herein respondent David, who can not now require petitioners, through a writ of preliminary mandatory injunction, to return the money. The right to the remedy in mandatory form may be barred or lost by non-action equivalent to acquiescence (See Am . Jur. Sees. 61-63, pp. 805-809, 2nd ed.)

Then again, respondent David has still other adequate, speedy and effective remedies, after a resolution in his favor of his petition to record charging lien for attorney's fee. One such remedy could be an application for a writ of attachment under the rules, once the trial court has determined that he is entitled to attorney's fees and the amount thereof, aside from the sum of P15,000.00 already paid to him.

WHEREFORE, THE PETITION IS HEREBY GRANTED: THE ORDERS ISSUED BY RESPONDENT JUDGE ON JANUARY 9, 1973, JANUARY 31, 1973 AND MARCH 1, 1973 ARE HEREBY SET ASIDE AS NULL AND VOID; AND THE RESPONDENT JUDGE IS HEREBY DIRECTED TO PROCEED WITH THE FULL HEARING AND RECEPTION OF THE EVIDENCE ON THE PETITION TO RECORD CHARGING LIEN. NO COSTS.

Castro (Chairman), Esguerra, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., on leave.

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