

**ARMANDO V. AMPIL, PETITIONER, VS. THE HONORABLE JUDGE
CORAZON JULIANO-AGRAVA ANTONIO M. PEREZ AND BENIGNO
PEREZ Y TUASON, RESPONDENTS.**

G.R. No. L-27394. July 31, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

An original action of certiorari to annul the lower court's questioned order requiring petitioner to surrender three certificates of title, notwithstanding his assertion of his right of an attorney's retaining lien over them.

Petitioner, for a considerable period of time, was the counsel for Angela Tuason de Perez in several court cases. The principal cases so handled successfully by petitioner for Angela were the following:

Civil Case No. 34626 of the Court of First Instance of Manila filed against Angela by herein respondents Antonio M. Perez and Benigno Perez y Tuason, her husband and son, respectively, asking principally that Angela be placed under guardianship because of her alleged prodigality and that a suitable person be appointed to administer her properties. On May 2, 1958, the parties submitted to the said court a compromise agreement, of the same date, which shortly afterwards was de-nounced by Angela. On September 30, 1958, without passing on the validity of the compromise agreement, the said court dismissed the action for lack of jurisdiction.[1]

Case G. R. No. L-14874 was the appeal to the Supreme Court taken by respondents Perezes from the court of first instance's dismissal of their action. This Court in its decision handed down on September 30, 1960, affirmed the dismissal, holding that jurisdiction properly pertained to the Juvenile and Domestic Relations Court of Manila.

Special Proceedings No. 03123 of the domestic court of Manila was then filed on November 10, 1960 by respondents Perezes, whose objective was limited to seeking the said court's approval of the above compromise agreement submitted on May 2, 1958 to the Manila court of first instance. Upon motion on behalf of Angela, the domestic relations court dismissed the proceeding on the ground of lack of jurisdiction over the subject matter, holding that "(T)he compromise agreement herein sought to be approved was allegedly entered into during the pendency of Civil Case No. 34626 of the Court of First Instance of Manila presumably to settle it amicably. But the said case was dismissed by that Court for lack of jurisdiction, and as its decision was affirmed by the Supreme Court, there was no more case to be settled by compromise because the three causes of action involved therein had not been refiled in this Court."[2]

G. R. No. L-19711, the appeal to the Supreme Court taken in turn by respondents Perezes from the domestic court's dismissal of their second action.

Petitioner asserts and it is not disputed, that sometime in November, 1966, Angela, acting through a new attorney-in-fact in the person of her daughter, Angela Perez y Tuason de Staley, terminated his services as counsel without just and lawful cause and without paying him for his professional services, for which he presented his bill in due course, as well as asserted his retaining lien over the three titles entrusted to him by Angela in the course of

his professional employment, in his letter of February 16, 1967 to respondents' counsel.[3]

After petitioner's discharge as counsel, developments ensued which gave rise to the present action. In Case No. L-19711, the pending appeal from the domestic court's order of dismissal of respondents Perezes' action, the very same compromise agreement of May 2, 1958 was submitted anew to this Court which approved the same in its Resolution of November 17, 1966 as follows:

"In L-19711 (Antonio M. Perez, et al. vs. Angela Tuason de Perez), the appearance of A. Pison, Jr. as counsel for respondent-appellee in substitution of Attys. C. S. Tanjuatco & Associates and Atty. Armando V. Ampil, is NOTED; and considering the motion filed by respondent Angela Tuason de Perez by and through her daughter and attorney-in-fact Angela Perez y Tuason de Staley and assisted by new counsel for said respondent, manifesting (1) that said daughter is her duly authorized attorney-in-fact; (2) that said respondent now confirms the compromise agreement entered into by her husband and her son on May 2, 1958, copy of which is attached to the motion as Annex 'B'; and (3) that said respondent affirms that this compromise agreement was right and proper, THE COURT RESOLVED to approve said compromise agreement." [4]

In the said compromise agreement,[5] Angela inter alia, ceded in full ownership to her son, respondent Benigno Perez, the Sampaloc, Manila property covered by T. C. T. No. 34769 and to her husband, respondent Antonio M. Perez, seven other properties[6] all situated in Sampaloc, Manila covered by seven separate titles, among them, T. C. T. Nos. 24927 and 24928 -- which three titles are the ones involved herein. Angela likewise agreed to pay her husband the sum of P63,000.00 in full settlement of his claim for damages. In turn, respondents Perezes, (with Antonio signing on behalf of his son Benigno as guardian ad litem) renounced any and all claims against Angela and acknowledged that "defendant (Angela) owns in full ownership the interests and properties presently in her name in J. M. Tuason and Co. and Gregorio Araneta, Inc., acknowledge that she is fully entitled to administer and/or encumber and/or alienate the said interests and properties as well as such other properties that she may acquire with the proceeds of the sale, exchange or encumbrance of the same."

Thereafter, respondents Perezes, having failed to obtain from petitioner the three titles to the properties ceded to them as above stated in the compromise agreement, as petitioner asserted his retaining lien over them, filed on February 22, 1967 with respondent domestic court a so-called motion for partial execution disputing petitioner's asserted lien of retention and asking the court to order petitioner to surrender the three titles to them.

Overruling petitioner's opposition asking the court to respect his right to retain the titles until the value of the professional services rendered by him to Angela shall have been paid in full by the latter, respondent court ordered under date of March 8, 1967 petitioner to surrender the titles to respondents Perezes within five days from notice, holding that "(A) s the Compromise Agreement has already been approved, it is believed that the Court can have it enforced and, in connection therewith, can compel Atty. Ampil to deliver the owners duplicates of T. C. T. 's Nos. 24927, 24928 and 34769 to the Perezes. x x x Any attorney's lien in favor of Mr. Ampil, as attorney of Tuason should be enforced against his client, and not against the Perezes." [7]

Petitioner thereupon, sought the present recourse and the Court in a resolution of April 13, 1967 issued a writ of preli-minary injunction against the enforcement of respondent court's questioned order. Petitioner urges that respondent court acted with grave abuse of discretion in having granted the motion to surrender the titles in his possession, notwithstanding the provisions of the first part of Rule 138, section 37 of the Rules of Court, expressly recognizing his right of retaining lien:

'SEC. 37. Attorneys' liens. -- An attorney shall have a lien upon the funds, documents and papers of his client which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. x x x "

Petitioner must prevail.

1. Full recognition of an attorney's retaining lien, present the elements of lawyer-client relationship, lawful possession of the client's funds, documents and papers and unsatisfied claim for attorney's fees, has invariably been extended by the Court in view of the categorical terms of the cited Rule.[8] In the latest case of *Matute vs. Matute*,[9] the Court again emphasized, speaking through Mr. Justice J. B. L. Reyes, that a counsel's right to retain muniments of title in his possession until payment of his lawful fees and disbursements is effected incontestable, and under the rule and section aforesaid, the attorney can not be compelled to surrender the muniments of title mentioned without prior proof that his fees have been duly satisfied. The courts, in the exercise of their supervisory authority over attorneys as officers of the court, are bound to respect and protect the attorneys' lien as a necessary means to preserve the decorum and respectability of the profession."

2. The Court cited therein the late Justice Laurel's opinion in *Rustia vs. Abeto*,[10] with regard to the inconvenience that may accrue to the client, and to the client's adversary for that matter as in the case at bar, because of the retaining lien thus exercised by an attorney, that such inconvenience "is the reason and essence of the lien. "But as in *Rustia*, we pointed out that "if it be entirely indispensable for the court to gain possession of the documents that have come to the attorney and are held by him in the course of his employment as counsel, it can require the surrender thereof by requiring the client or claimant to first file proper and adequate security for the lawyers' compensation." [11] This alternative was in fact availed of by respondent Antonio M. Perez, who, upon motion filed on August 10, 1967 alleging that "the properties in question awarded to Antonio Perez have a market value of easily a quarter of a million pesos and the property awarded to Benigno Perez easily has an equal value", secured from the Court its resolution of October 13, 1967 lifting the preliminary injunction as to Titles Nos. 24927 and 24928 of Manila upon his filing and the approval of a bond in the sum of P25,000.00 answerable for whatever damages may be suffered by petitioner.

3. It should be under scored that the retaining lien of an attorney is only a passive right, and cannot be actively enforced. It amounts to a mere right to retain the documents and papers as against the client, until the attorney is fully paid, the exception being that funds of the client in the attorney's possession may be applied to the satisfaction of his fees. An attorney's retaining or possessory lien is distinguished from his charging or special lien, which is an attorney's specific lien for compensation on the fund or judgment, which he has recovered by means of his professional services for his client in a particular case and is provided in the second part of Rule 138, section 37.[12] Such charging lien covers only the services rendered by an attorney in the action in which the judgment was obtained and takes effect under the cited rule after the attorney shall have caused a statement of his claim of such lien to be entered upon the records of the particular action with written notice thereof to his client and to the adverse party it presupposes that the attorney has secured a favorable money judgment for his client and grants the attorney "the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements." On the, other hand, the attorney's retaining lien is a general lien for the balance of the account between the attorney and his client, and applies to the documents and funds of the client which may come into the attorney's possession in the course of his employment.[13] The attorney's retaining lien attaches to the, client's documents and funds in the attorney's possession regardless of the outcome, favorable or adverse, of any cases he may have handled for his client. Called upon at all times to exert utmost zeal with unstinted fidelity in upholding his client's cause and subject to appropriate disciplinary action if he should fail to live up to such exacting standard, the attorney in return is given the assurance through his liens -- retaining and charging -- that collection of his lawful fees and disbursements is not rendered difficult, if not altogether thwarted, by an unappreciative client. He is thereby given an effective hold on his client to assure payment of his services in keeping with his dignity as an officer of the court.

4. The fact that the client Angela, in the compromise agreement, undertook to transfer her properties covered by the titles in question to respondents Perezes would not defeat petitioner's retaining lien over the same. Petitioner's position is similar to that of a creditor who holds an attachment lien over the properties, and the

client-debtor must discharge the lien before he can dispose the properties to a third person free of such lien. In enforcing his retaining lien over the titles, petitioner was enforcing the same against Angela as his former client who was admittedly the owner of the properties and not against her adversaries to whom the client had undertaken to transfer the same under the compromise agreement, without first discharging the attorney's lien by payment of the fees due to petitioner. What obviously was lost sight of by respondent court in ruling that petitioner's lien "should be enforced against his client and not against the Perezes" was that petitioner obtained possession of the titles when they did appertain to his then client, Angela. As of that time, petitioner's retaining lien was fastened to the titles and respondent court was bound to respect and protect the same.

The situation would be different where title to the property is the very subject in dispute in the case and the court adjudges the client's adversary to be rightfully entitled thereto. In such a case, the titles to the property could not be said to be properties of the client, over which the attorney may claim a retaining lien. The attorney may enforce his lien only over properties of his client and not against those of his client's adversary.[14] And the adversary's right as prevailing party to enforce the judgment for the property adjudged to him should not depend on or be prejudiced by the client's ability or refusal to pay the attorney. The Court, however, has seen no need to make any pronouncement on such a hypothetical situation that is not involved in the issues of the present case.

1. The fact that the properties involved were exclusively paraphernal properties of Angela is undisputed. This fact is admitted in respondents' very petition in the proceedings below, (Annex A, petition) where they alleged that Angela was squandering and liquidating her properties for the benefit of a third party with whom she had fallen in love and that the fruits of these properties belong to her conjugal partnership of gains with respondent Antonio M. Perez and are the main source of income of said partnership.

2. It is error for respondents to contend that petitioner has no right to assert a lien over properties that no longer belong to his client Angela but to them. By virtue of the transfers as seemingly agreed to by Angela in November, 1966, after petitioner's discharge as counsel, the properties thenceforth may be deemed to have been validly transferred to respondents, as stipulated by the contracting parties. And petitioner is in no way interfering with their taking possession of the properties so transferred to them nor with their enjoyment of the fruits thereof. All that petitioner asserts and exercises is his passive lien of retaining the muniments of title thereto. Such retention impedes the corresponding registration and transfer of the titles to respondents, it is true. But rather than enforcing execution of the compromise agreement against petitioner, who is in no way respondents' adversary and disregarding petitioner's valid retaining lien, respondent court is vested with due authority to enforce the same against Angela as the actual adverse party in interest, by requiring her to produce the titles to effect registration of the covenanted transfers and thereby compelling her to satisfy petitioner's just fees or to file proper and adequate security for their payment. (Matute, supra).

3. Respondents' argument that the compromise agreement was executed since May 2, 1958, over eight years before petitioner's discharge as Angela's counsel and that petitioner as Angela's counsel pursued interests adverse to them and "sought to obtain the discharge of the compromise agreement"[15] (which, in fact, petitioner successfully blocked until his discharge as counsel) -- implying thereby that petitioner should be held bound by said compromise agreement -- does not change the legal picture. It should be remembered that the said compromise agreement was executed by one Roberto Della Rosa as Angela's attorney-in-fact to settle Civil Case 34626 in the Manila court of first instance;[16] that one of Angela's grounds in denouncing the same was that it was not freely or validly entered into by her representative;[17] and that this Court, speaking through Mr. Justice Reyes, rejected respondents' contention that the Manila court should have held that Angela was in estoppel, by the execution and submittal of the compromise agreement, to question the jurisdiction of said court.[18]

Subsequently, when the same compromise agreement was sought to be submitted by respondents in the proceedings below for the limited objective of seeking respondent court's approval thereof, said court dismissed the proceedings on the ground of lack of jurisdiction over the subject-matter, since Civil Case No. 34626 of the

Manila court which was presumably to be settled amicably by the compromise agreement was dismissed by final decision of that court as affirmed by this Court and "there was no more case to be settled by compromise." (*supra*).

The only question then appealed to this Court in the second case, No. 19711, was the correctness of respondent court's order of dismissal; if the same was set aside, the case would be remanded to respondent court for trial and hearing on the myriad built-in issues. When pending said appeal and after petitioner's discharge, the same compromise agreement (of dismissed Civil Case No. 34626) was submitted anew in November, 1966, to this Court by her new attorney-in-fact, assisted by new counsel, manifesting *inter alia* that Angela "now confirms the (said) compromise agreement", the picture that clearly emerges is that in legal contemplation, Angela and respondents Perezes had then executed a new agreement for the transfer of her said properties to respondents.

The transfer of said properties to respondents could in no way be deemed to retroact to over 8 years back on May 2, 1958, when the compromise agreement was originally executed, presumably to settle Case No. 34626 which was eventually dismissed in 1960 for lack of jurisdiction of the Manila court. The transfer of the said properties as provided in the compromise agreement as now confirmed in November, 1966 by Angela and approved by this Court in its Resolution of November 17, 1966 was effective only as of his much later date.

There can be no question, then, that these properties were exclusively Angela's prior to November, 1966 and that respondents could lay no claim thereto by virtue of the transfers provided in the compromise agreement until after its confirmation by Angela and approval in November, 1966; and that respondents' contention that petitioner could not exercise his retaining lien over the titles which had properly come into his possession during his engagement as Angela's counsel long before November, 1966 is untenable.

Even respondent court so understood it correctly, when in its questioned order, it related that "(T)he case has been returned to this Court with a resolution of the appellate tribunal approving the Compromise Agreement. That is now the law of the case. It is as if, after the petition herein had been filed, this Court, acceding to the prayer of the Perezes, had by final order adjudged Tuason to be an incompetent, had decided to dispense with the appointment of a guardian by directly assuming the functions of one, and lastly had approved the Compromise Agreement on behalf of the ward. Questions of procedural propriety, or of jurisdiction, are no longer open because of the final action taken in the premises by the highest tribunal of the land." [19]

ACCORDINGLY, the writ of certiorari is granted and the order of respondent court of March 8, 1967 is hereby declared null and void and set aside. With costs against private respondents.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, and Villamor, JJ., concur.
Barredo, J., reserves the filing of his separate dissenting opinion.

[1] Annex D, Petition.

[2] Annex B, Petition.

[3] Annex A, Motion for Partial Execution, of Answer to petition.

[4] Emphasis copied.

[5] Petition, Annex C.

[6] Stated in the agreement to be subject to a bank mortgage of P106,000.00.

[7] Annex D, Petition.

[8] *Rustia vs. Abeto*, 72 Phil. 133 (1941); *Rotea vs. Delupio*, 67 Phil. 330 (1939); *Ulanday vs. MRR Co.*, 45 Phil. 540 (1923); *Dauz vs. Fontanosa*, Adm. Case No. 403, "A", Sept. 30, 1963, 9 SCRA 14; *Blanza vs. Arcangel*, Adm. Case No. 492, Sept. 5, 1967, 21 SCRA 1.

[9] L-27832, May 28, 1970.

[10] See fn. 8, *supra*.

[11] *Matute*, *supra*, fn. 9.

[12] "x x He shall also have a lien to the same extent upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client, from and after the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment, or issuing such execution, and shall have caused written notice thereof to be delivered to his client and to the adverse party; and he shall have the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements." (Rule cited)

[13] *Black's Law Dictionary*, 4th ed., 165.

[14] See *De la Pena vs. Hidalgo*, 20 Phil. 323 (1911).

[15] Respondent Antonio Perez' Memorandum, p. 3.

[16] Annex C, Petition.

[17] *Perez vs. Tuason de Perez*, L-14874, 109 Phil. 654, 656 (1960).

[18] *Idem*, at p. 660.

[19] Annex D, Petition.

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