

**IN THE MATTER OF THE CLAIM FOR ATTORNEY'S FEES.  
CLARO M. RECTO, CLAIMANT AND APPELLEE, VS. ESPERANZA P. DB  
HARDEN AND FRED M. HARDEN, DEFENDANTS AND APPELLANTS.**

*G.R. No. L-6897. November 29, 1956*

Ponente: CONCEPCION, J.

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**CONCEPCION, J.:**

This is an appeal taken by Esperanza P. de Harden and Fred M. Harden from a decision of the Court of First Instance of Manila, the pertinent part of which is of the following tenor:

"The contingent fee to which the claimant is entitled under paragraph 3 of the contract, Exhibit JJJ or 20, is 20% of P1,920,554.85 or the sum of P384,110.97.

"Wherefore, this Court hereby approves the recommendation of the Commissioner with the above-stated modification, and finds that Attorney Claro M. Recto is entitled to the sum of THREE HUNDRED EIGHTY-FOUR THOUSAND ONE HUNDRED AND TEN PESOS AND NINETY-SEVEN CENTAVOS (P384,110.97), representing 20% of Esperanza P. de Harden's share in the conjugal properties owned by her and her husband, Fred M. Harden, as contingent fee stipulated in paragraph 3 of the Contract of Professional Services, Exhibit JJJ or 20, and the said Esperanza P. de Harden is hereby ordered to pay the said amount above-stated."

It appears that sometime in July, 1941, appellant, Mrs. Harden, and appellee, Claro M. Recto, executed the following:

"CONTRACT OF PROFESSIONAL SERVICES

KNOW ALL MEN BY THESE PRESENTS:

"That I, ESPERANZA PEREZ DE HARDEN, of, age, married to Fred M. Harden, and temporarily residing in the Philippines, with address; at 534 Sales Street, Manila, have engaged the services of Attorney Claro M. Recto to appear and act as my counsel in the action which I will file against my husband, Fred M. Harden, for the purpose of securing an increase in the amount of support being received by me from the conjugal partnership of myself and said Fred M. Harden, and for the purpose likewise of protecting and preserving my rights in the properties of the said conjugal partnership, in contemplation of the divorce suit which I intent to file against him in the competent Court of California and of the liquidation of the conjugal partnership between us, this contract of services to be under the following conditions:

"1. That in lieu of retainer fee, which under the circumstances I am not in a position to pay, I hereby agree to pay Attorney Claro M. Recto, such payment to be made monthly, during the pendency of the litigation and until the termination of the same, twenty-five (25%) per cent of the total increase in allowance or pension which may be awarded to me by the court over and above the amount of P1,500.00 which I now receive monthly from defendant Fred M. Harden out of the funds of the conjugal partnership; Provided, that should the case be terminated or an amicable settlement thereof be arrived at by the parties before the expiration of two years from the date of the filing of the complaint, I shall continue to pay the said twenty-five (25%) per cent up

to the end of said period.

"2. That the aforesaid monthly payments shall be in addition to whatever amount may be adjudged by the court against the defendant Fred M. Harden or against the conjugal partnership by way of litis expenses, that is, attorney's fees chargeable as expenses of litigation.

"3. That as full and complete satisfaction of the fees of Attorney Claro M. Recto in connection with the case above referred to, and said case being for the purposes aforesaid, that is, to secure an increase in the amount of support I now receive as well as to protect and preserve my rights and interest in the properties of the conjugal partnership, in contemplation of divorce and of the liquidation of said partnership, I hereby agree to pay said Attorney Claro M. Recto twenty (20%) per cent of the value of the share and participation which I may receive in the funds and properties of the said conjugal partnership of myself and defendant Fred M. Harden, as a result of the liquidation thereof either by death, divorce, judicial separation, compromise or by any means or method by virtue of which said partnership is or may be liquidated.

"4. All expenses in connection with the litigation are to be for my account, but the same may be advanced by Attorney Claro M. Recto, to be reimbursed to him either from the money which I receive by way of support or from the funds of the conjugal partnership.

"5. It is hereby understood that this contract includes the services of Attorney Claro M. Recto in connection with the securing of the liquidation of the properties, and assets of the conjugal partnership of myself and Fred M. Harden, upon dissolution of said partnership or for any other cause mentioned in Paragraph (3) hereof.

"In witness whereof, I have signed these presents in the City of Manila, Philippines this \_\_\_\_\_ day of July, 1941.

s/ Esperanza P. de Harden

t/ ESPERANZA P. DE HARDEN

ACCEPTED:

s/ Claro M. Recto

t/ CLARO M. RECTO"

In compliance therewith, on July 12, 1941, the appellee, as counsel for Mrs. Harden, commenced Civil Case No. 59634 of the Court of First Instance of Manila, entitled "Esperanza P. de Harden vs. Fred M. Harden and Jose Salumbides." In the complaint therein filed, it was prayed, among other things: (a) that Mrs. Harden be given the exclusive administration of the business and all properties of the conjugal partnership of Mr. and Mrs. Harden; (b) that, in the event of denial of this prayer, the defendants be ordered to inform her "of everything pertaining to the administration of said business and properties", as well as to render accounts thereof and to permit her to examine the books and records pertinent thereto; (c) that Mr. Harden be ordered to account to Mrs. Harden, and to return to this jurisdiction, the sum of P449,015.44 allegedly withdrawn by him from the Philippines or sent by him to Hongkong on April 1, 1941; (d) that defendant Salumbides be ordered to account for all moneys, amounting to P285,000.00, belonging to the business and assets of said conjugal partnership and deposited by him in a safety box, either in his name, or in that of Antonio Wilson, from January 23 to December 23, 1940; (e) that the transfer, in the name of Salumbides, of certain shares of stock, allegedly belonging to the conjugal partnership, be rescinded and said defendant ordered to transfer said shares of stock in the name of Mrs. Harden or in that of Mr. and Mrs. Harden, should Mr. Harden be allowed to continue as administrator of said partnership; (f) that the transfer, made by Mr. Harden and/or by defendant Salumbides, as his attorney-in-fact, of 36,000 shares of stock of the Angelo Mining Company, to some residents of Hongkong, be rescinded and said shares returned to the assets of the conjugal partnership and placed in the name of Mr. and Mrs. Harden; (g) that the monthly allowance of Mrs. Harden be increased from P1,500 to P15,000; (h) that, pending final decision, Mr. Harden be ordered to

increase the allowance or pension of Mrs. Harden and their daughter Sarah Elizabeth to P10,000 a month; and (i) that a writ of preliminary injunction be issued restraining the defendants from disposing of the assets of the conjugal partnership in fraud of Mrs. Harden.

By an order dated July 12, 1941, the court authorized the issuance of said writ, upon the filing of the corresponding bond. It appears that, pursuant to an agreement submitted by both parties, and with a view to avoiding unnecessary embarrassment, restraint or inconvenience in the financial operations of the business enterprises affected by said writ of preliminary injunction, the same w\$s amended by an order dated July 19, 1941, in the sense that

"\* \* \* without prejudicing in any way the rights of the parties in this case, a separate bank account be established in the Chartered Bank of India, Australia and China, of Manila, and all transactions in connection with the aforesaid businesses passed through that account by Mr. Harden or his duly authorized Representative, who at present is Mr. Salumbides, without the necessity of securing a particular order from this Court on each occasion; that the present funds in the Philippine National Bank in the name of Plaza Lunch and Fred M. Harden be utilized for the purpose of starting said special bank account in the Chartered Bank of India, Australia and China; that all income from the aforesaid businesses be deposited in this special bank account and no checks be drawn upon the same, except to pay the necessary overhead and running expenses including purchases of tobacco, merchandise, etc., required for the proper operation of said businesses; that a new set of books be opened by Mr. Harden or his duly authorized representative covering all business transactions passed through said special bank account and the same be opened for inspection by the plaintiff's duly authorized representative.

"The order of injunction of July 12, 1941, is modified only to the above extent, and in all other respects is maintained."

Subsequently, the Philippines was invaded by the Japanese and placed under military occupation. Then came the liberation, in the course of which the records of this case were destroyed. On October 23, 1946, said records were reconstituted at the instance of appellee herein. Thereafter, the proceedings were resumed and, in due course, the Court of First Instance of Manila rendered, on or about October 31, 1949, a decision the dispositive part of which we quote:

"In view of the foregoing considerations, this court finds and so holds that—

"(a) Fred M. Harden abandoned his domicile of origin in New Jersey and established a domicile of choice in Manila, Philippines, since 1901;

"(b) The matrimonial domicile of Fred M. Harden and Esperanza P. de Harden was established in Manila, Philippines, from the date of their marriage on December 14, 1917;

"(c) Since they did not execute any antenuptial contract before their marriage, all the properties, real or personal, acquired by either or both of them on and after December 14, 1917, up to the present, over and above the sum of P20,000.00 representing Fred M. Harden's capital, are hereby declared conjugal properties;

"(d) The total amount of P1,944,794.37 representing deposits in safety deposit boxes in the name of Jose Salumbides, the selling price of the house in Los Angeles, California, and the pre-war and post-war remittances abroad of Fred M. Harden, from which has already been deducted the sum of P160,000.00 covering payments for deficiency Federal income taxes and attorney's fees, both in the tax case and the present one, is hereby declared chargeable to the share of defendant Harden and deductible from whatever participation he may still have in the said conjugal partnership upon the liquidation thereof, upon his failure to return and deposit them in the name of the Plaza Lunch with the Manila branch of the Chartered Bank of India, Australia and China up to the time this decision shall become final;

"(e) A conjugal lien be annotated in the original and owner's duplicate of Transfer Certificates of Title Nos. 24393, 62436- and 54911 of the Register of Deeds of Manila and in Original Certificate of Title No. 2292 of Quezon Province, and on all the certificates of shares belonging to said conjugal partnership, as well as in the corresponding books of the companies or corporations issuing them, whereby it will be made to appear that any subsequent alienation or encumbrance of said properties by Fred M. Harden alone or his representative without the consent of his wife will be deemed fraudulent and subject to revocation or cancellation for being in fraud and prejudicial to the right of Esperanza P. de Harden;

"(f) Within a period of fifteen (15) days after this decision shall have become final, Fred M. Harden and Esperanza P. de Harden are hereby ordered to execute a document to be approved by this court creating and express active trust upon the remaining cash assets and income of the conjugal partnership in the Philippines, whereby the Philippine Trust Company, with offices in Manila, will act as trustee, subject to the right of Fred M. Harden to receive therefrom the sum of P2,500.00 a month by way of allowance and an equal amount for the plaintiff as separate support and maintenance;

"(g) Within thirty (30) days after this decision shall have become final, Fred M. Harden shall inform the plaintiff of all the properties and businesses of the conjugal partnership, be they in the Philippines or abroad, and render a true and complete accounting of the earnings and profits thereof;

"(h) The plaintiff is entitled to Litis expensae in the amount of P175,000.00 for services rendered by her counsel up to the rendition of this judgment, which Fred M. Harden or the herein receiver is ordered to pay within a period of fifteen (15) days after this decision shall become final; and

"(i) The writ of preliminary injunction of July 12, 1941, is hereby declared permanent and the order of receivership of November 20, 1946, is hereby maintained, but said auxiliary remedies will be automatically lifted upon the conclusion of the annotation of the conjugal lien and the execution of the deed of trust above mentioned. Without costs.

"IT IS SO ORDERED."

The defendants appealed from said decision to this Court, where the case was docketed as case No. L-3687. While the appeal was thus pending before us, herein appellee filed a manifestation and a motion, both dated February 20, 1952. In said "manifestation", appellee stated that Mrs. Harden had instructed him, by letter, to "discontinue all proceedings relative to" said case, "vacate all orders and judgments rendered therein, and abandon and nullify all her claims to the conjugal partnership existing between her and Mr. Harden", in accordance with several instruments dated January 29, 1952, and executed without the knowledge, advice and consent of said appellee, as counsel for Mrs. Harden, whereby: (1) Mr. and Mrs. Harden had purportedly agreed to settle their differences in consideration of the sum of P5,000 paid by Mr. Harden to Mrs. Harden, and a monthly pension of \$500 to be paid by him to her; (2) Mr. Harden had created a trust fund of \$20,000 from which said monthly pension of \$500 would be taken; and (3) Mr. and Mrs. Harden had mutually released and forever discharged each other from all actions, debts, duties, accounts, demands and claims to the conjugal partnership, in consideration of the sum of \$1. It was further asserted, in appellee's "manifestation", that the purpose of the said instruments, executed by Mr. and Mrs. Harden, was to defeat the claim of the former for attorney's fees, for which reason, he prayed, in his aforementioned motion, that

"a) pending the resolution of this motion, the receiver appointed herein be authorized to continue holding the properties above mentioned in his custody in order not to defeat the undersigned's inchoate lien on them;

"b) A day set aside to receive the evidence of the undersigned and those of the plaintiff and the defendant Fred M. Harden, in order to determine the amount of fees due to the undersigned, by the appointment of a referee or commissioner for the reception, of such evidence;

"c) After due hearing, the undersigned be declared entitled to the sum of P400,000.00 as his fees for services rendered in behalf of the plaintiff in this case, under paragraph 3 of the contract, Annex 'A', and to that end a charging lien therefore be established upon the properties above-mentioned;

"d) And the receiver be ordered to pay to the undersigned the full amount of the fees to which the latter is found to be entitled."

Counsel for the defendants-appellants, in turn, moved for the dismissal of the case, to which appellee objected. Acting upon the issues raised in such motion for dismissal and in appellee's motion to establish and enforce his charging lien, as counsel for Mrs. Harden, this Court issued on July 22, 1952, a resolution the pertinent part of which reads:

"It will be seen from the above that the defendants-appellants pray for the complete dismissal of the above entitled case without prejudice to the annotation of the contingent claim of Attorney Claro M. Recto on the property under receivership, other than the 368,553 shares of the Balatoc Mining Company which belong to Fred M. Harden. On the other hand, Attorney Claro M. Recto agrees to the lifting of the writ of preliminary injunction, the orders of contempt and commitment, and all other interlocutory orders which were issued in the course of this case, with the exception of the receivership, but objects to the dismissal of the case on the ground that, since receivership is merely an auxiliary remedy, the present case should be allowed to remain pending for the purpose of maintaining the receivership to safeguard his right to collect the fees that may be due him.

"Attorney Claro M. Recto prays that a commissioner or referee be immediately appointed by this Court to receive evidence in support of his allegations as to his attorney's lien and its enforcement. Counsel for the defendants-appellants does not object to this proceeding provided that the restrictions set forth by him be observed. However, this Court does not have the proper facilities for receiving evidence in order to determine the amount of the fees claimed by Attorney Claro M. Recto, and it is deemed advisable that this matter be determined by the Court of First Instance. This is specially so considering the opposition to the claim of Attorney Claro M. Recto filed by Attorney J. W. Ferrier, Sr. in behalf of Esperanza P. de Harden.

"In view of the foregoing, the above entitled case is hereby remanded to the court of origin in order to determine the amount of fees claimed by Attorney Claro M. Recto in his motion dated February 20, 1952.

"It is understood that, after said fees had been finally determined and paid, this case will be completely dismissed as prayed for by the defendants-appellants, without prejudice to considering the claim of the receiver for compensation as stated in his urgent motion dated July 2, 1952.

"Pending the determination of the amount of fees claimed by Attorney Claro M. Recto, the writ of preliminary injunction, the orders of contempt and commitment, and all interlocutory orders which were issued in the course of this case, are hereby lifted and vacated, and with regard to the receivership, the same is hereby dissolved, only with respect to the 368,553 shares of the Balatoc Mining Company. As to the rest of the properties, the receivership shall be maintained."

In compliance with said resolution, the records of this case were remanded to the lower court, which, on September 2, 1952, designated a commissioner to receive evidence on the amount of the fees collectible by herein appellee and to report thereon. After due hearing, said commissioner submitted, on February 6, 1953, a report of about one hundred (100) pages of the printed record on appeal, setting forth, in detail, the evidence introduced by both parties, and his findings of fact, with the following conclusion and recommendation:

"Taking into consideration the value of the properties involved in this litigation, the length of time in which claimant had handled the same for Esperanza Harden, the volume and quality of the work performed, the complicated legal questions involved, the responsibility assumed by the claimant as counsel, his reputation in the bar, the difficulties encountered by him while handling the same in which he had to work hard every inch

of the way because of the stiff oppositions filed by adverse counsel, the diligence he employed not only in the preservation of the records in his possession during the days of enemy occupation but also in the protection of the interests of Esperanza Harden, his successful handling of said case and those cases growing out of it which reached the Supreme Court, and the extra services he rendered in her behalf in the tax and other court cases, the undersigned Commissioner concludes that claimant is entitled to the full amount of 20% of Esperanza Harden's share of the conjugal properties, as provided in paragraph 3 of the Contract of Professional Services, Exhibit JJJ.

"WHEREFORE, the undersigned Commissioner respectfully recommends that Atty. Claro M. Recto be paid the equivalent amount of 20% of Esperanza P. de Harden's share of the conjugal properties or the sum of P369,410.04. as his contingent fee for services rendered in her behalf."

After appropriate proceedings, the lower court rendered a decision dated April 30, 1953, adopting substantially said report of the commissioner, but increasing the contingent, fee of appellee herein from P369,410.04, the sum recommended in the report, to P384,110.97. Hence, this appeal taken by Mr. and Mrs. Harden.

The first question for determination therein is the validity of the above-quoted contract of services, which the appellants assail as void, mainly, upon the ground: (1) that Mrs. Harden cannot bind the conjugal partnership without her husband's consent; (2) that Article 1491 of the Civil Code of the Philippines in effect prohibits contingent fees; (3) that the contract in question has for its purpose to secure a decree of divorce, allegedly in violation of Articles 1305, 1352 and 1409 of the Civil Code of the Philippines; and (4) that the terms of said contract are harsh, inequitable and oppressive.

The first objection has no foundation in fact, for the contract in dispute does not seek to bind the conjugal partnership. By virtue of said contract, Mrs. Harden merely bound herself—or assumed the personal obligation—to pay, by way of contingent fees, 20 % of her share in said partnership. The contract neither gives, nor purports to give, to the appellee any right whatsoever, personal or real, in and to her aforesaid share. The amount thereof is simply a basis for the computation of said fees.

For the same reason, the second objection is, likewise, untenable. Moreover, it has already been held that contingent fees are not prohibited in the Philippines and are impliedly sanctioned by our Canons (No. 13) of Professional Ethics, (see, also, *Ulanday vs. Manila Railroad Co.*, 45 Phil., 540, 554.) Such is, likewise, the rule in the United States (*Legal Ethics* by Henry S. Drinker, p. 176).

"\* \* \* in the United States, the great weight of authority recognizes the validity of contracts for contingent fees, provided such contracts are not in contravention of public policy, and it is only when the attorney has taken an unfair or unreasonable advantage of his client that such a claim is condemned." (See 5 Am. Jur. 369 et seq.; *Ballentine, Law dictionary*, 2nd ed. p. 276.)

Needless to say, there is absolutely nothing in the records before us to show that appellee herein had, in any manner, taken an unfair or unreasonable advantage of his client Mrs. Harden.

The third objection is not borne out, either by the language of the contract between them, or by the intent of the parties thereto. Its purpose was not to secure a divorce, or to facilitate or promote the procurement of a divorce. It merely sought to protect the interest of Mrs. Harden in the conjugal partnership, during the pendency of a divorce suit she intended to file in the United States. What is more, inasmuch as Mr. and Mrs. Harden are admittedly citizens of the United States, their status and the dissolution thereof are governed—pursuant to Article 9 of the Civil Code of Spain (which was in force in the Philippines at the time of the execution of the contract in question) and Article 15 of the Civil Code of the Philippines—by the laws of the United States, which sanction divorce. In short, the contract of services, between Mrs. Harden and herein appellee, is not. contrary to law, morals, good

customs, public order or public policy.

The last objection is based upon principles of equity, but, pursuant thereto, one who seeks equity must come with clean hands (*Bastida, et al., vs. Dy Buncio & Co.*, 93 Phil., 195; 30 C. J. S. 475), and appellants have not done so, for the circumstances surrounding the case show, to our satisfaction, that their aforementioned agreements, ostensibly for the settlement of the differences between husband and wife, were made for the purpose of circumventing or defeating the rights of herein appellee, under his above-quoted contract of services with Mrs. Harden. Indeed, having secured a judgment in her favor, acknowledging her rights to the assets of the conjugal partnership, which turned out to be worth almost P4,000,000 in addition to *litis expensae* in the sum of P175,000, it is inconceivable that Mrs. Harden would have waived such rights, as well as the benefits of all orders and judgments in her favor,

in consideration of the paltry sum of \$5,000 allegedly paid to her by Mr. Harden and the additional sum of \$20,000 to be paid by him in installments, at the rate of \$500 a month. In fact, no explanation has been given for this most unusual avowed settlement between Mr. and Mrs. Harden. One can not even consider the possibility of a reconciliation between the spouses, the same being inconsistent with the monetary consideration for said alleged settlement. What is more, the records show that the relations between said spouses—which were bad indeed, not only in July, 1941, when Mrs. Harden engaged the services of the appellee, but, even before, for Mr. and Mrs. Harden were separated since 1938—had worsened considerably thereafter, as evidence by an action for divorce filed by Mr. Harden in New Jersey, in July 1948, upon the ground of repeated acts of infidelity allegedly committed by Mrs. Harden in 1940 and 1941.

Again, it appears that appellee had rendered, under the contract in question, the following services, for the benefit of Mrs. Harden:

- He succeeded in defeating defendants' motion for the dissolution of the writ of preliminary injunction, issued by the Court on July 12, 1941, and amended on July 19, 1941.

- On November 12, 1946, appellee moved for the appointment of a receiver, upon the ground that, despite said writ of preliminary injunction, the defendants had been disposing of the properties of the conjugal partnership for the purpose of defrauding Mrs. Harden. After due hearing, the court, by an order dated November 20, 1946, directed the appointment of Abelardo Perez as receiver of said properties, upon the filing of a P10,000 bond. Defendants asked, on February 13, 1947, that the receivership be suspended, or else, that they be allowed to file a bond for the discharge of the receivership. Appellee replied objecting thereto, unless the defendants posted a P4,000,000 bond. Subsequently on March 5, 1947, the defendants sought a reconsideration of the order of November 20, 1946, and the discharge of the receiver. By an order dated March 21, 1947, the Court authorized said discharge upon the filing, by the defendants, of a bond in the sum of P500,000, provided that Mr. Harden "should bring back all the 368,553 shares of the Balatoc Mining Co., in his name to the Philippines for deposit with the Clerk of Court, or with the Chartered Bank of India, Australia and China,, at Manila \* \* \*."

- On motion of the appellee dated March 4, 1947, the Court, by an order dated April 5, 1947, directed Mr. Harden to remit to Mrs. Harden the sum of \$2,500, to be charged against her *Litis expensae*. Upon similar motion, filed by appellee on or about April 26, 1947, the Court ordered Mr. Harden, on May 13, 1947, to furnish Mrs. Harden the sum of \$5,000, under the same conditions.

- On June 21, 1947, the defendants instituted Civil Case No. G. R. No. L-1499 of this Court, entitled "Fred M. Harden and Jose Salumbides vs. Emilio Pefia, Abelardo Perez and Esperanza P. Harden" for the purpose of annulling and setting aside, by writ of certiorari, the aforementioned orders of the lower court dated July 12, 1941, November 20, 1946, and April 5 and May 13, 1947, and to restrain, in the meantime, the enforcement thereof. After appropriate proceedings, in the course of which appellee appeared as counsel for Mrs. Harden, and like counsel for the petitioners therein, filed several lengthy, detailed pleadings and memoranda, decision was rendered on November 21, 1950, denying the writ of certiorari prayed for.

- On or about September 9, 1947, appellee filed a motion alleging that despite the writ of preliminary injunction above mentioned, the defendants had, fraudulently and without judicial consent, remitted abroad several sums of money aggregating P1,000,608.66, and praying that Mr. Harden be ordered to return this sum to the Philippines, within a stated period, said sum to be deposited with the account of the Plaza Lunch at the Manila Branch of the Chartered Bank of India, Australia and China. Mr. Harden objected to said motion. Appellee filed a rejoinder, to which Mr. Harden replied. Appellee filed a rejoinder to the rejoinder. On October 7, 1947, the Court granted appellee's motion. Mr. Harden sought a reconsideration, which was opposed by the appellee on October 27, 1947, and denied by an order dated November 13, 1947. Mr. Harden moved, on November 18, 1947, for the suspension of, this order, which was immediately objected to by the appellee and then denied by the Court.

- Inasmuch as said order of November 13, 1947 had not been complied with, appellee filed on November 27, 1947, a motion praying that Mr. Harden be declared in contempt of court and punished accordingly. Meanwhile, or on November 24, 1947, Mr. Harden had instituted case G. R. No. L-1816 of this Court against Hon. Emilio Pefia, as Judge of the Court of First Instance of Manila, and Mrs. Harden. In the petition therein filed, Mr. Harden applied for a writ of certiorari annulling said orders of Judge Pefia of October 7 and November 13, 1947, and prayed that, pending disposition of the case, a writ of preliminary injunction be issued restraining the respondents therein from enforcing said orders, particularly through contempt proceedings. Hence, the lower court deferred action on the aforementioned motion of November 27, 1947. After due hearing, this Court, in a resolution dated February 12, 1948, refused to issue the writ of preliminary injunction prayed for. Subsequently, or on November 21, 1950, decision was rendered denying the petition for a writ of certiorari.

- Soon after the issuance of our resolution in said case G. R. No. 1816, dated February 12, 1948, or to be exact on March 27, 1948, the lower court issued an order directing Mr. Harden to comply, within five (5) days from notice, with the order of October 7, 1947. On April 6, 1948, appellee filed with the lower court the, corresponding formal charges against Mr. Harden for contempt of court. After due hearing, Mr. Harden was, by an order of April 28, 1948, found guilty as charged and ordered confined "until he complies with the aforementioned orders" of October 7, 1947 and March 27, 1948. On motion of Mr. Harden, said order of April 28, 1948 was suspended until May 4, 1948, on which date he was arrested and placed in confinement at the New Bilibid Prison, in Muntinlupa, Rizal. On July 10, 1948, he filed with this Court a petition for a writ of habeas corpus against the Director of Prisons, (G. R. No. L-2349, entitled "Fred M. Harden vs. The Director of Prisons"), which, in due course was denied in a decision promulgated on October 22, 1948.

- During the military occupation of the Philippines by the Japanese, the appellee made representations with the Japanese Government to prevent the commandeering of a business establishment belonging to Mr. and Mrs.

Harden. Moreover, he succeeded in persuading the Japanese to refrain from interning Mrs. Harden and her daughter and to allow her to withdraw, from the former's deposit in a local bank, from P200 to P250 a month, for their subsistence. He, likewise, lent her money to meet her needs and spent the sum of P55,000 in the preservation of the records and papers pertaining to the business and other properties of the conjugal partnership of Mr. and Mrs. Harden.

- Appellee assisted, also, the receiver, as his counsel and, in such capacity, took all steps essential for the proper discharge of the duties of the former. Among other things, appellee sought and obtained judicial authority for some important acts of administration of, and disposition by, the receiver. He (appellee) secured judicial intervention for the protection and preservation of the assets of the conjugal partnership, including orders for the delivery of certificates of stock, the return thereof and/or its deposit with the clerk of court. He, likewise, represented the receiver in seeking war damage payments.

- In civil case No. 6222 of the Court of First Instance of Manila, entitled "Francisco Dahipan vs. Fred M. Harden" for the recovery of P113,837.17, it was decided, through appellee's intervention, that the conjugal assets would bear the payment of P22,767.43 only, the balance to be chargeable exclusively against Mr. Harden's share of the conjugal partnership.

- Appellee instituted civil case No. 6940 of the Court of First Instance of Manila, entitled "Abelardo Perez vs. Chartered Bank of India, Australia and China and Fred M. Harden", for the recovery of P1,000,608.66 and the return of stock certificates of the Balatoc Mining Co., which had been sent abroad.

- He (appellee) represented Mrs. Harden in connection with a million-peso federal tax case against Mr. and Mrs. Harden.

- Appellee successfully blocked Mr. Harden's attempts to withdraw: (1) \$53,000 and forward the same to the Collector of Internal Revenue of Los Angeles, California; (2) \$50,000.00, allegedly to defray expenses in resisting a new tax assessment against him in the United States; and (3) P65,000 for his expenses.

Then too, the conjugal partnership had varried and extensive business interests and its assets were worth almost P4,000,000. The pleadings, motions, oppositions, rejoinders, and memoranda filed, and the evidence introduced, in the aforementioned cases—in which appellee was pitted against one of the most experienced and able members of the Philippine Bar—were numerous, extensive and exhaustive. For instance, the record on appeal in one of those cases, namely, G. R. No. L-45687, consisted of 966 pages.

In short, considering the character of the services rendered by the appellee, the nature and importance of the issues in said litigations, the amount of labor, time (1941 to 1952) and trouble involved therein, the skill displayed in connection with said cases, the value of the property affected by the controversy, the professional character and standing of the appellee, the risks assumed and the results obtained, we are of the opinion, and so hold, that the contract of services in question is neither harsh nor oppressive or inequitable.

Under their second assignment of error, appellants maintain that:

"The lower court erred in failing to find as a fact borne out by the evidence that the legal services of Attorney Claro M. Recto to Mrs. Esperanza P. de Harden, payment for which is sought by him in this case, have already been paid by his immediate execution pending appeal of the decision in Civil Case No. CFI-R-59634 (SC-G.R. No. L-3687), wherein he collected the sum of P175,000.00 for all such legal services."

Said decision, however, states clearly that the afore-mentioned sum of P175,000 represents *litis expensae*, and the contract between the appellee and Mrs. Harden explicitly declares that said *litis expensae* shall be "in addition to" appellee's share of 25% of the increase in the allowance of Mrs. Harden and his attorney's fees of 20% of her share in the conjugal partnership. The second assignment of error is, therefore, devoid of merit.

Appellants, further contend, that:

3. The lower court erred in holding that the inchoate share of the wife, Esperanza P. de Harden, in the undissolved and unliquidated conjugal partnership properties of the Harden spouses, is capable of certain valuation before such dissolution and liquidation, . and summarily assessing the value of Mrs. Harden's share in such conjugal properties without proper evidence.

4. "The lower court erred in awarding 20% of such inchoate share to Attorney Claro M. Recto from Mrs. Harden's interests in the Harden conjugal properties, summarily assessing such 20% inchoate share as of a value of P384,110.97, and ordering the payment of said sum to Attorney Recto in pursuance of the provisions of paragraph 3 of the Contract of Professional Services."

Appellants' arguments in support thereof may be summarized as follows: The contract of services in question provides that appellee's contingent fees shall be 20% of the share of Mrs. Harden in the conjugal partnership. Pursuant to law, the share of Mrs. Harden shall be determined upon the liquidation of said partnership, which has not taken place, as yet. What is more, it cannot be effected until the dissolution of the marriage relation between Mr. and Mrs. Harden. Inasmuch as this relation subsists, it follows that the amount of attorney's fees due to appellee herein should not have been determined in the decision appealed from.

This line of argument overlooks the fact that said contract of services was made, principally, in contemplation of a suit for divorce that, according to Mrs. Harden, she intended to file before a competent court in California, "and of the liquidation of the conjugal partnership between" her and Mr. Harden. Had she filed said action for divorce and secured a decree of divorce, said conjugal partnership would have been dissolved and then liquidated, and the share of Mrs. Harden therein would have been fixed. However, this cannot take place, either now,, or in the foreseeable future, owing to the aforementioned agreements between Mr. and Mrs. Harden, which were made for the evident purpose of defeating appellee's claim for attorney's fees. In other words, the occurrence, within the time contemplated by the parties—bearing in mind the nature of, and the circumstances under which they entered into, said contract of services of the event upon which the amount of said fees depended, was rendered impossible by Mrs. Harden. Hence, whether such event be regarded as a condition or as a period, she may not insist upon its occurrence, prior to the enforcement of the rights of the herein appellee, for "the condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment" (Art. 1186, Civil Code) and "the debtor shall lose every right to make use of the period" when he "violates any undertaking, in consideration of which the creditor agreed to the period." (Art. 1198, Civil Code.)

It should be noted, also, that the compensation agreed upon for appellee's services, consists of three (3) parts, namely: (a) 25% of the increase in the allowance of Mrs. Harden; (b) *litis expensae*; and (c) 20% of her share in the conjugal partnership. The first part was dealt with in the first paragraph of their contract of services. The second and third parts were the object of the second and third paragraphs, respectively, The first paragraph limited the rights of appellee thereunder to two (2) years, in the event of termination of the case or amicable settlement thereof within two (2) years from the filing of the complaint. No such limitation appears in the second and third

paragraphs of said contract. Hence, the same were intended by the parties to be fully operative under any and all conditions.

It may not be amiss to add that the value of the properties involved has been assessed, not summarily, but after due notice and full dress hearing, in the course of which both parties introduced testimonial and documentary evidence. Appellants presented Exhibits' 1 to 58, whereas those of the appellee were so numerous that, having begun with Exhibit A, his last piece of documentary evidence was marked Exhibit 26 Y's. The transcript of the hearing, which lasted ten (10) days, covers over 220 pages.

The other assignments of error made by appellants herein are mere corollaries of those already disposed of, and, hence, no further discussion, thereof is necessary.

In conclusion, it appears that the assets of the conjugal partnership between Mr. and Mrs. Harden are reasonably valued at ₱3,841,109.70; One-half (1/2) thereof, representing the share of Mrs. Harden, is therefore, worth ₱1,920,554.85: Twenty per centum (20%) of this sum is ₱384,110.97, which is the contingent fee due to the appellee, apart from the *litis expensae* already paid to him. Inasmuch as the appellee has collected, also, the sum of ₱80,000.00, on account of said contingent fees, there results in his favor a balance of ₱304,110.97.

Subject to this qualification, the decision appealed from is hereby affirmed, therefore, with costs against the appellants. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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