

**ESPERANZA P. DE HARDEN, PLAINTIFF, VS. FRED M. HARDEN, ET AL.,
DEFENDANTS. AURORA R. DE RECTO, ADMINIS-TRATRIX OF THE
ESTATE OF CLARO M. RECTO, CLAIMANT-APPELLEE, VS. JOSE
SALUM...***G.R. No. L-22174. July 21, 1967*

Ponente: BENGZON, J.P., J.

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Fred Harden, an American citizen, and Esperanza Perez were married in the Philippines on December 14, 1917. They lived together, acquiring considerable conjugal properties, until 1938 when they separated. In July 1941, Mrs. Harden hired the late Claro M. Recto as her counsel in the suit she was contemplating to file against her husband. In their contract, she agreed, inter alia, to pay Recto 20% of her share in the conjugal partnership. On July 12, 1941, Mrs. Harden, thru Recto, filed her complaint for ad-ministration and/or accounting of the conjugal properties against Mr. Harden, and Jose Salumbides, herein oppositor--appellant, as his attorney-in-fact. The war suspended the proceedings. After liberation, the records of the case were reconstituted and on November 20, 1946, the conjugal properties of the Harden spouses were placed under receiv-ership. On October 31, 1949, the lower court rendered judgment for Mrs. Harden. Mr. Harden appealed to this Court[1] and then left the Philippines. Mrs. Harden must have followed her husband for in January 29, 1952, an ami-cable settlement was effected between them in Canada. As a consequence thereof, Recto was instructed by Mrs. Harden to discontinue the proceedings.

On February 20, 1952, Recto filed a motion in the Su-preme Court to establish his attorney's charging lien. The Hardens opposed. This Court, by resolution dated July 22, 1952, remanded the case to the trial court to determine the amount of Recto's attorney's fees. But all the ancillary writs and processes issued in the case were dissolved except the receivership on the conjugal properties, which was maintained. Subsequently, the lower court, af-ter hearing, held that Recto was entitled to P384,110.97 as counsel fees. Mrs. Harden appealed to this Court[2] which upheld Recto but modified the amount to P304,110.97 only.

On January 22, 1957, Recto moved for execution of the judgment. The lower court having granted the motion, the Hardens went on certiorari[3] to this Court. We dis-missed the petition on August 2, 1957 for lack of merit. Recto was then able to secure an alias writ of execution. Again this was questioned on certiorari[4] by the Hardens in this Court. On February 10, 1958, We upheld Recto once more. This finally enabled the latter to levy upon the stocks and other properties of the Hardens, the public sales of which realized P100,805.00. A balance of P203,305.97 thus remained in Recto's favor.

On July 2, 1958, Recto moved ex parte to levy on other shares of stock owned by the Hardens but registered in the name of Salumbides, including the 410,638 shares in the Surigao Consolidated Mining Co. Upon being noti-fied that the 410,638 Surigao shares, inter alia, were to be sold at public auction, Salumbides filed an opposition claiming that he owned said shares, the same being regis-tered in his name. This was denied. His motion to

recon-sider the denial also met the same fate, the lower court holding that Salumbides did not own the said Surigao shares of stock. Whereupon, Salumbides appealed to this Court.[5] We dismissed the same on December 22, 1958, for being fri-volous. The motion to reconsider subsequently filed failed to save the appeal. On April 21, 1959, the said 410,638 shares were sold at public auction for P147,679.97[sic] leaving an unsatisfied judgment balance of P55,624.00 in Recto's favor.

The next incident concerns the return to the receiver of the P20,531.90 cash dividends from December 14, 1955 to December 14, 1956, received by Salumbides on the same 410,638 Surigao shares. As early as April 4, 1957, Recto had already moved that Salumbides be ordered to deliver to the receiver all the dividends on the said shares which were under receivership. On July 1, 1957, the lower court issued an order requiring Salumbides to "turn over to the receiver x x x all the dividends he has already received from the Surigao Mining Company, Inc." Salumbides' motion to reconsider this order was denied.

On February 10, 1958, Recto moved for a writ of exe-cution to implement the order of July 1, 1957. This was approved on February 21, 1958. Salumbides filed a motion to reconsider, claiming that he owned the dividends per-taining to the 410,638 shares. On July 30, 1959, the low-er court ordered Salumbides to comply with the order of July 1, 1957 by depositing P20,531.90 in the Commercial Bank & Trust Co. The latter moved for reconsideration al-leging, inter alia, that he had spent P45,900.99 as ex-penses for the Hardens from 1955 to 1957 and for which he must be reimbursed. When this was denied, a second motion to reconsider was filed, Salumbides claiming that the P20,531.90 cash dividends had already been disbursed for the benefit of the Harden family. On August 29, 1961, the lower court, after hearing and presentation of evi-dence, denied the second motion to reconsider, holding that the alleged incurring of expenses by Salumbides was a mere afterthought concocted by him.

Preliminary steps were taken by Salumbides to appeal this order. Meanwhile, on October 2, 1960, Recto died and his wife, as his administratrix, was substituted as claimant. On October 7, 1961, the lower court required Salumbides to submit a P25,000.00 supersedeas bond to pre-vent execution pending appeal. This compelled Salumbides to abandon the intended appeal. On October 23, 1961, he deposited P20,531.90 in the bank in compliance with the order of August 29, 1961. On November 21, 1961, Mrs. Rec-to, with court approval, withdrew P25,000.00 from the Har-den funds under receivership in the bank, thus reducing the judgment balance to P30,624.00.

On November 27, 1961, Mrs. Recto moved for full com-pliance with the order of July 1, 1957 to satisfy the remaining judgment balance, relying upon a statement[6] issued by the Surigao Consolidated that from April 15, 1950 to July 2, 1955, Salumbides had received all the cash divi-dends on the P410,638 shares, amounting to P60,797.29. Re-solving the motion and opposition interposed by Salumbides, the lower court on December 11, 1962 ordered Salumbides to deposit P30,624.00 in the Commercial Bank and Trust Compa-ny for final satisfaction of the judgment balance in Rec-to's favor. This is the incident under the present appeal, first taken to the Court of Appeals but subsequently cer-tified to Us.

Appellant Salumbides first submits that the order of July 1, 1957 which is sought to be fully enforced did not include the cash dividends received by him before December 14, 1955 since Recto's motion of April 4, 1957 was limited to those dividends received after said date. This is with-out merit. The dispositive portion of the order of July 1, 1957, which reads:

"Finding the said petition to be well founded this Court hereby orders Jose Salum-bides to turn over to the Receiver, Atty. Juan S. Ong all the dividends that he has already received from the Surigao Consoli-dated Mining Company, Inc."

clearly includes all dividends received as of then by Salumbides. The Surigao Consolidated statement dated April 5, 1957 shows that the cash dividends on the 410,638 shares from April 15, 1950 to July 1955 had also been delivered to and already received by Salumbides. And the lower court found, in its order of August 29, 1961, that Salumbides never appealed the order of July 1, 1957. Hence, the same can no longer be questioned now.

Salumbides would also argue that those dividends had already been disbursed by him for the benefit of the Harden family. This question, however, had already been raised and argued twice before the lower court which tried and decided it adversely in the order of August 29, 1961. Although Salumbides filed his notice of appeal and appeal bond, the appeal was never really pursued. In fact, on October 23, 1961, he manifested to the lower court that he had already complied with the order of August 29, 1961, thus making the same final and conclusive as against him.

The defenses of (a) bar by prior judgments, (b) prescription, extinctive and acquisitive, (c) laches, and (d) waiver, set up by Salumbides, are without merit. For the first, he would rely upon the lower court's orders of December 7, 1953 and January 24, 1956, which declared that the receivership did not include future dividends on the shares of stock. But the more recent order of August 29, 1961 expressly declared these orders erroneous and already superseded and reversed by the later court orders of December 14, 1955, July 1, 1957 and February 21, 1958.

There could be no prescription, extinctive or acquisitive. Even if the period for bringing the action be five years as appellant suggests, still the same has not yet lapsed. The dividends being litigated were declared from April 15, 1950 to July 2, 1955. But the receiver's letter of May 9, 1953[7] asking for the dividends and claimant's motions of November 4, 1953, December 15, 1955, April 4, 1957, February 10, 1958 and November 27, 1961, to the same effect, seasonably interrupted the prescriptive period. These extrajudicial and judicial demands also negative laches on claimant's part.

Salumbides could not acquire the dividends in question by prescription since he possessed them, not in concept of owner, adverse to the Hardens, but rather as attorney-in-fact of Mr. Harden. He first claimed ownership only in his omnibus opposition dated July 1, 1957. But two years later, or on August 24, 1959, in his motion to reconsider, Salumbides admitted that these dividends belonged to the Hardens.

Neither is Recto's demand for the P20,531.00 cash dividends which were declared from December 14, 1955 to December 14, 1956, a waiver of the previous dividends. He merely wanted to satisfy his judgment credit from among any of the Harden assets available. Since the later dividends failed to fully satisfy the judgment, Recto could still enforce his valid claim against the previous dividends. As to the cash dividend of October 3, 1955, the order of December 14, 1955 is very clear that it "shall not constitute a precedent with respect to the disposition of all dividends whether already declared or to be herein-after declared." The defense of waiver, therefore, fails.

Lastly, appellant would insist that upon the death of Mr. Harden in Canada on May 1, 1959, or during the pendency of the proceedings, Recto's claim should have been forthwith dismissed and filed in the administration proceedings of Mr. Harden's estate. But appellant erroneously assumes that Recto's claim is a "money claim" under the Rules[8] when it is neither a claim nor a judgment for money directed against the decedent, Mr. Harden. Recto's claim is founded on a personal obligation of Mrs. Harden. But granting that Recto's claim is a money claim against Mr. Harden, that would not help appellant any. We have already ruled[9] that a charging lien established on the property in litigation to secure payment of attorney's fees partakes of the nature of a collateral security or of a lien on real or personal property, the enforcement of which need not be made in the administration proceedings.

WHEREFORE, the order appealed from is hereby affirmed. Costs against oppositor-appellant.

SO ORDERED.

Reyes, JBL, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., on official leave.

[1] Harden v. Harden, L-3687.

[2] In the Matter of the Claim for Attorney's Fees - Recto v. Harden, L-6897, Nov. 29, 1956.

[3] Harden v. Bayona, L-12611.

[4] Harden v. Bayona, L-13386.

[5] Harden v. Harden, Recto v. Salumbides, L-14751.

[6] Record on Appeal, pp. 466-467.

[7] Record on Appeal, pp. 28-29.

[8] Sec. 5, Rule 86, Rev. Rules of Court.

[9] Olave v. Canlas, L-12707, Feb. 28, 1962.

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