

BACOLOD MURCIA MILLING COMPANY, INC., PLAINTIFF AND APPELLANT, VS. FIDEL HENARES, AS JUDICIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF THE LATE DON ESTEBAN HENARES, DEFENDANT AN...

G.R. No. 13505. March 30, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from an order of the Court of First Instance of Negros Occidental ordering plaintiff to turn over to the Provincial Sheriff the sum of P4,407.23 representing the amount of attorney's lien in favor of Ricardo Nolan.

There is no dispute as to the essential facts. This case began sometime in November, 1946 when Ricardo Nolan appeared as counsel in an action for foreclosure of mortgage instituted by the Bacolod-Murcia Milling Co., Inc. against Fidel Henares, as Judicial Administrator of the Intestate of the late Esteban Henares. This case was docketed in the Court of First Instance of Negros Occidental as Civil Case No. 546. After trial, the Court rendered, on July 11, 1947, its decision, the dispositive part of which reads:

"WHEREFORE, the Court renders judgment sentencing the defendant herein as Judicial Administrator of the Intestate Estate of Esteban Henares to pay unto the plaintiff the amount of P31,405.52 with legal interest at the rate of 6% annually, from the date of the filing of the complaint until fully paid, plus 10% of the total indebtedness as attorney's fees and costs of this litigation, within ninety (90) days after Executive Order No. 25, as amended by Executive Order No. 32, known as the Debt Moratorium, shall have been lifted by His Excellency, the President of the Republic of the Philippines, and in case of failure by the defendant to effect payment thereof after the expiration of said period of time, the mortgaged properties shall be sold in accordance with law and the proceeds of said sale shall be applied to the payment of said obligation.

"SO ORDERED."

Years later, on July 7, 1953, Ricardo Nolan filed a notice of lawyer's lien with the Court, alleging that he was entitled to 10% of the amount of the judgment in Civil Case No. 546 as attorney's fees. Plaintiff-appellant opposed this notice of lawyers' lien on the ground that petitioner Nolan had ceased to be their lawyer; and that furthermore, it had no record confirming the allegations of Nolan.

On November 13, 1953, a writ of execution was issued in the foreclosure suit (Civil Case 546) in favor of plaintiff-appellant Bacolod-Murcia, and in pursuance thereof, the mortgaged properties covered by the judgment were sold at public auction on July 16, 1954, a certificate of sale of the same date having been issued by the Provincial Sheriff in favor of the Bacolod-Murcia, as the successful bidder.

On September 4, 1954, the sale at public auction was confirmed by the Court. Four days later, or on September 8, 1954, Ricardo Nolan petitioned that plaintiff-appellant Bacolod-Murcia be ordered to pay him the sum of P4,407.23, the amount of his lawyer's lien. Plaintiff-appellant again filed an opposition, based mainly on its

argument that the judgment having been satisfied by the sale of the mortgaged properties (confirmed on September 4, 1954 before the petition of Nolan), there was no longer any judgment to which the attorney's lien asserted by Nolan could legally attach; consequently, it argued, the lower court had no jurisdiction to entertain the petition filed by Nolan.

After presentation of evidence for both parties, the trial court issued an order dated December 24, 1954, the dispositive portion reading:

"WHEREFORE, the Court hereby orders the plaintiff to turn over to the Provincial Sheriff of Negros Occidental the sum of P4,407.23, the amount of petitioner's lawyer's lien, from the proceeds of the Sheriff's sale, which are in the possession of the said plaintiff, so that the Sheriff can turn over said amount to the petitioner.

"SO ORDERED."

From the above order, plaintiff Bacolod-Murcia appealed¹ to the Court of Appeals; but that Court certified the case to us, because the appeal raises purely questions of law; and, moreover, because the jurisdiction of an inferior court is put in issue.

Reduced to its essence, the appeal of Bacolod-Murcia is based on the contention, that the petition of Ricardo Nolan of September 8, 1954, praying for payment of his attorney's lien, is beyond the jurisdiction of the lower court, said petition having been filed only after the satisfaction of the foreclosure judgment, which for all purposes terminated the case; this, notwithstanding that on July 7, 1953, long before the writ of execution was issued in the case, Nolan filed a notice of lawyer's lien with the court.

The decisive issue upon which hinges the resolution of this appeal is whether the satisfaction of the judgment in a foreclosure suit, by purchase by the judgment creditor in a judicial sale of the property mortgaged, extinguishes attorney's lien.

The American precedents (our law on the matter being of American origin) hold that satisfaction of the judgment, in general, does not by itself bar or extinguish the attorney's lien (6 C. J. 797-798, citing cases). As a matter of fact, if a satisfaction of the judgment had been in disregard of the attorney's rights, notice having previously been given to the judgment debtor, the court may, upon the attorney's motion, vacate such satisfaction and enforce judgment for the amount of the lien (*In Re King*, 60 NE 1054; *Goodrich vs. McDonald*, 112 NY 157, 19 NE 649; and *Pritchard vs. Fulmer*, 2 ALR 474 and cases cited therein). In other words, a satisfaction of the judgment in fraud of the lien may be vacated even by motion and the attorney will be allowed to enforce the judgment for the amount of his lien (6 C. J. 797-798, citing *Desaman vs. Butler*, 114 Minn. 362, 131 NW 463, *Northrup to Hayward*, 113 NW 701, and others).

The American cases holding that satisfaction of the judgment extinguishes the lien proceed on the theory that there has been waiver of the lien either by the attorney's active conduct (as in *Bernabee vs. Holmes*, 88 NW 1098, and *Goodrich vs. McDonald*, 19 NE 649) or by passive omission (as in *Pritchard vs. Fulmer*, 2 A. L. R. 474).

Can it be said that in the case at bar, the attorney waived his lien by failing to take steps to indicate his desire to preserve his lien? We think not. He filed a notice of lawyer's lien on July 7, 1953, which he served on his client and on the adverse party in the case. He wrote a letter to the Provincial Sheriff of Negros Occidental before the sale at public auction of the mortgaged property was held, and in which he said:

"You are hereby requested to retain from the proceeds of the sale of the above-referred to property and turn over to the undersigned the amount of the lawyer's lien which is P4,407.23."

This notice accounts for the annotation made by the Sheriff on the Certificate of Title in favor of the plaintiff-appellant in the following tenor:

"Esta venta esta sujeta a la reclamacion de Don Ricardo Nolan sobre sus honorarios en la cantidad de P4,404.63."

Without resolving the validity of said annotation, which is merely a confirmation of the information given by Attorney Nolan regarding his lien, the acts of the latter cannot be construed as a waiver. On the contrary, they indicate that he wanted the same to be preserved.

Turning now to the jurisdiction of the Court below to enforce the lien after satisfaction of the judgment, in the Philippines, the attorney's charging lien is embodied in Section 33, Rule 127 of the Rules of Court, and attaches—

"Upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he (the attorney) has secured in a litigation of his client."

When Ricardo Nolan filed his notice of lawyer's lien on July 7, 1958, such lien properly 'attached to the judgment for the payment of money and to all executions that might thereafter be issued in pursuance of such judgment, in accordance with Section 33, Rule 127, above-cited. Nolan filed notice of his lien long before the sale of the mortgaged properties on July 16, 1954, and even before the writ of execution was issued on November 18, 1955. The court, therefore, properly acquired jurisdiction to take cognizance of the claim for attorney's fees, since an attorney's lien takes legal effect from and after the time the attorney concerned caused notice of said lien to be entered in the record, and served on his client and the adverse party. (*Dahlke vs. Viña*, 51 Phil., 707; *Macondray and Co., Inc. vs. Jose*, 66 Phil., 590; *Menzi and Co. vs. Bastida*, 63 Phil., 16). The operative fact that determines the birth of the lien, it is clear, is the time at which the lawyer caused a statement of his claim to be entered in the record, and not any other. That the amount of the attorney's lien was, at the time, unliquidated, does not militate against this conclusion, as it has been held that it is not necessary to the existence of the lien that the amount due the attorney should be liquidated, although the exact amount of the claim should be determined before the lien can be enforced (*Dahlke vs. Vina*, *supra*).

"An attorney may cause a statement of his claim to be registered even before the rendition of any judgment) because the purpose of recording his lien is merely, to establish his right thereto, as distinguished from the enforcement of the lien Which takes place only after the judgment is secured in favor of the client. (*Palanca vs. Pecson*, 94 Phil., 419; *Off. Gaz.*, 1585.)

When, on July 16, 1954, the sale at public auction was made and the judgment legally satisfied, Nolan could not have lost his right to enforce the lien which he had upon the judgment, since he had filed notice of the lien as far back as July 7, 1953. It was this notice which conferred on the court the jurisdiction to determine the lien. Nolan's subsequent petition on September 8, 1954 was but an incident in the enforcement of the lien and should not be made the determinative factor on the question of jurisdiction. Nor did the sale of the property at public auction extinguish the lien; for, while in this jurisdiction the lien does not attach to the property in litigation, it is obvious that it should attach to the proceeds of the judgment for the payment of money, otherwise, the lien would be meaningless and of no substance. A judgment for money is only as valuable as the amount that could be realized therefrom; and to speak of a lien on the judgment without including therein its proceeds, at least in pecuniary terms, is to lose perspective in the differentiation of substance and form.

Moreover, the nature of a charging lien argues that it should attach to the proceeds of a judgment. Such lien has been regarded as:

"an equitable right to have the fees and costs due to him for services in a suit secured to him out of the judgment or recovery in that particular suit * * *. It is based on the natural equity that the plaintiff should not

he allowed to appropriate the whole of a judgment in his favor without paying thereout for the services of his attorney in obtaining such judgment." (6 C. J. 766-767, citing cases)

"The lien of an attorney upon a judgment of his fees and disbursements in the cause . . . is properly denominated a lien in the broad sense of the term, but it has few points of resemblance to the ordinary lien upon tangible property. It does not depend in any way upon possession, but crests on the equity of the attorney's claim, to be repaid out of the proceeds of a judgment". (Wright vs. Cobleigh, 21 N. H., 339, 341, cited in 6 C. J. 767)

"The attorney's lien, whether under the statute or at common law, is equitable in its nature. Even the decisions in this country, which confine its existence and application to the narrowest limits, always speak of it as an equitable lien, right or privilege. It is not property in the thing, which gives a right of action at law. It is a charge upon the thing which is protected in equity. Courts of law may recognize it when the res is in possession of the lienor, and the owner is seeking to deprive him of such possession. But where the thing is not in possession, and some affirmative action is required by the attorney, he, like other claimants, must seek relief in equity. In some instances, a formal suit should be instituted; in others, an application to the court rendering the judgment, for the proper order, would be sufficient." (Fillmore vs. Wells, 10 Colo. 228, 2S6, 15 P. 343, 3 AmSR 667, cited in 6 C. J. 767)

It is well to note that the lien in the present case is not sought to be enforced as against the debtor but against the attorney's client, who received the proceeds of the judgment. There is no reason why it should not be enforced against said client, since the lien should attach to the proceeds of the judgment and he received the same without paying his attorney who was responsible for its recovery. The client, upon receiving satisfaction without paying his lawyer, held the proceeds for the judgment in trust for his lawyer to the extent of the value of his recorded lien, because after the charging lien has attached, the attorney is, to the extent of said lien, to be regarded as an equitable assignee of the judgment or funds produced by his efforts. (Epp. vs. Hinton, 102 Kan. 435; 6 C. J. 766, citing cases.)

Hence, the attorney can enforce his lien in the same case, for anyway, the trial court acquired jurisdiction over the matter of the lien when it attached upon the filing of notice of lawyer's lien on July 7, 1953, and until the same is settled, the court should be deemed to have retained its jurisdiction. The tendency of the cases is to have the attorney's fees determined and enforced in the same action where the services were rendered, to avoid multiplicity of suits (Palanca vs. Pecson, *supra*; Fabie vs. Ngo Boo Soo, 84 Phil., 857). In a case similar to the one at bar (M. E. Grey vs. Insular Lumber Co., 97 Phil., 833, judgment was entered for plaintiff for a sum of money. In compliance with the judgment, defendant issued a check in favor of plaintiff and gave this check to the attorney. The lawyer presented a motion with the trial court asking that the defendant be ordered to issue two checks, one, for the plaintiff, and another, for his fees. The court determined the lawyer's fees and ordered the defendant therein to issue two checks as prayed for by the attorney. On appeal, this Court remanded the case to the trial court for the determination of the lawyer's fees and to give an opportunity for the plaintiff therein or his representative to appear and contest the amount claimed, as in the first instance, plaintiff was not represented. The remand to the trial court to determine the lawyer's fees even after the judgment had been satisfied, could only mean that the court did not thereby lose jurisdiction to entertain the petition to enforce the lien.

Indeed, as observed in *Goodrich vs. McDonald*, *supra*,

"The lien, as thus established, is not strictly like any other lien known to the law, because it may exist, although the attorney has not, and cannot in any proper sense have, possession of the judgment (recovered). It is a peculiar lien, to be enforced by peculiar methods. It was a device, invented by the courts for the protection of attorneys against the knavery of their clients, by disabling clients from receiving the fruits of recoveries without paying for the valuable services by which the recoveries were obtained. The lien was never enforced

like other liens."

Moreover, to hold in the instant case that the lien was extinguished in the premises is to put a premium and an undue emphasis on tendencies which are better curbed than encouraged. It would practically require that an attorney, having secured a judgment for his client for the payment of money, should not only file his notice of lawyer's lien and have the right thereto determined but also apply to the court for execution of the judgment in order to anticipate a possible duplicity on the part of said client, thereby subordinating his clients' interest to his own. This is conduct which, by ethical considerations, should be viewed askance; much less, therefore, should it, by legal compulsion, be given encouragement.

Plaintiff-appellant assigns as another error that the order appealed from does not contain any statement of the facts and the law on which it is based. Obviously, this is based on Section 1, Rule 35 of the Rules of Court, and Section 12, Article VIII of the Constitution. The contention is untenable, since these provisions have been held to refer only to decisions on the merits and not to orders of the trial court resolving incidental matters such as the one at bar (See *Soncuya vs. National & Investment Board*, 40 Off. Gaz. 6th Sup. 297).

Wherefore, the order appealed from is affirmed. Costs against appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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