

**HELEN DAHLKE, ASSISTED BY HER HUSBAND ALBERT H. DAHLKE,
PLAINTIFF AND APPELLANT, VS. CARMEN VINA, DEFENDANT. GIBBS
& MCDONOUGH, APPELLEES.**

G.R. No. 28252. March 14, 1928

Ponente: STATEMENT May 27, 1927, the legal firm of Gibbs & McDonough filed the following attorney's lien: "Come now the undersigned and to this Honorable Court respectfully manifest: "That they are the attorneys of record for the plaintiff and appellee, Helen Dahlke; that this Honorable Court has rendered judgment therein in favor of plaintiff and appellee, Helen Dahlke, and against Carmen Vina, defendant and appellant. "That the undersigned attorneys have and claim a lien upon said judgment for services performed by them for said Helen Dahlke in the present case and in various other matters prior to this date in the sum of two thousand pesos (P2,000). "Wherefore, the undersigned pray that the said lien be noted of record for all legal effects." June 3, 1927, this court, through its Vacation Justice, made the following order: "Considering the pleading of the attorneys for the plaintiff and appellee in the above entitled case, stating that said attorneys have and claim a lien upon the judgment therein rendered in favor of the plaintiff and appellee and against the defendant and appellant in the sum of P2,000, it is ordered that the same be noted of record and certified copy thereof and of this order be furnished the lower court when the record is remanded." The case was then sent back to the Court of First Instance of the City of Manila, in which the attorneys filed the following petition: "Come now the undersigned attorneys and to this Honorable Court respectfully pray that an order issue directing the clerk of court to issue a writ of execution in the name of the undersigned attorneys instead of the plaintiff so that the amount of the judgment may be paid to the undersigned attorneys direct." Upon which the court made the following order: "This matter is now before the court upon a petition presented by attorneys Gibbs & McDonough requesting for the reasons therein set forth that a writ of execution be issued directing that the amount due under the judgment herein be paid to them. It appearing that said petition is just and reasonable: "It is, therefore, ordered that a writ of execution issue in the name of Gibbs & McDonough instead of the plaintiff, and that in said writ the amount due under the judgment herein should be made payable to said Gibbs & McDonough. So ordered." After which and on the same day, the appellant here filed a motion stating in substance that the issuance of the execution in favor of the attorneys would cause great harm to the plaintiff upon the ground: "(a) That the plaintiff does not owe the said attdrneys any amount as great as that nor has she been informed that she owes them anything," and "(b) that the plaintiff is not insolvent," and that no formal demand has ever been made, and prays that the order issuing the execution be revoked. After a hearing and without the taking of any testimony as to the value of the services by either party, the lower court denied plaintiff's motion, from which she appeals and contends that the lower court erred in its order of June 10, 1927, directing that a writ of execution should be issued in the name of the attorneys and not in the name of the plaintiff, and in deciding that P2,000 should be paid to the attorneys for professional services without any evidence or proof of the claim, and in admitting the petition of the attorneys without giving the plaintiff a chance or opportunity to present her objection. JOHNS, J.

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STATEMENT

May 27, 1927, the legal firm of Gibbs & McDonough filed the following attorney's lien:

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"That they are the attorneys of record for the plaintiff and appellee, Helen Dahlke; that this Honorable Court has rendered judgment therein in favor of plaintiff and appellee, Helen Dahlke, and against Carmen Vina, defendant and appellant.

"That the undersigned attorneys have and claim a lien upon said judgment for services performed by them for said Helen Dahlke in the present case and in various other matters prior to this date in the sum of two thousand pesos (P2,000).

"Wherefore, the undersigned pray that the said lien be noted of record for all legal effects."

June 3, 1927, this court, through its Vacation Justice, made the following order:

"Considering the pleading of the attorneys for the plaintiff and appellee in the above entitled case, stating that said attorneys have and claim a lien upon the judgment therein rendered in favor of the plaintiff and appellee and against the defendant and appellant in the sum of P2,000, it is ordered that the same be noted of record and certified copy thereof and of this order be furnished the lower court when the record is remanded."

The case was then sent back to the Court of First Instance of the City of Manila, in which the attorneys filed the following petition:

"Come now the undersigned attorneys and to this Honorable Court respectfully pray that an order issue directing the clerk of court to issue a writ of execution in the name of the undersigned attorneys instead of the plaintiff so that the amount of the judgment may be paid to the undersigned attorneys direct."

Upon which the court made the following order:

"This matter is now before the court upon a petition presented by attorneys Gibbs & McDonough requesting for the reasons therein set forth that a writ of execution be issued directing that the amount due under the judgment herein be paid to them. It appearing that said petition is just and reasonable:

"It is, therefore, ordered that a writ of execution issue in the name of Gibbs & McDonough instead of the plaintiff, and that in said writ the amount due under the judgment herein should be made payable to said Gibbs & McDonough. So ordered."

After which and on the same day, the appellant here filed a motion stating in substance that the issuance of the execution in favor of the attorneys would cause great harm to the plaintiff upon the ground: "(a) That the plaintiff does not owe the said attorneys any amount as great as that nor has she been informed that she owes them anything," and "(b) that the plaintiff is not insolvent," and that no formal demand has ever been made, and prays that the order issuing the execution be revoked.

After a hearing and without the taking of any testimony as to the value of the services by either party, the lower court denied plaintiff's motion, from which she appeals and contends that the lower court erred in its order of June 10, 1927, directing that a writ of execution should be issued in the name of the attorneys and not in the name of the plaintiff, and in deciding that P2,000 should be paid to the attorneys for professional services without any evidence or proof of the claim, and in admitting the petition of the attorneys without giving the plaintiff a chance or opportunity to present her objection.

JOHNS, J.:

The question involved is the legal construction to be placed on section 37 of the Code of Civil Procedure which is as follows:

"Lawyers' Liens.—A lawyer shall have a lien upon all the funds and papers and documents of his client which may lawfully have come into his possession, and may retain the same until his lawful fees and disbursements

due to him from his client have been paid, and may apply such funds to the satisfaction thereof He shall also have a lien to the same extent upon all judgments and decrees for the payment of money, and executions issued in pursuance of such judgments and decrees which he has secured in a litigation of his client, from and after, but not before, 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 decree, or issuing such execution, and shall have caused written notice thereof to be delivered to the adverse party, and shall have the same right and power over such judgments, decrees, and executions to enforce his lien as his client had or may have, to the extent that may be necessary for the payment of his just fees and disbursements."

In the instant case, the lien in question was filed on a judgment rendered in favor of the plaintiff for and on account of legal services which the attorneys rendered to plaintiff, and in all things and respects complies with the terms and conditions of section 37 as to the preparation and the filing of the lien.

It will be noted that the lien is not founded upon any express written contract, and that the amount of the claim is in the nature of a quantum meruit or the reasonable value of legal services performed, and that there has never been any agreement between the parties or any legal adjudication of the amount due or owing the attorneys. The section above quoted expressly provides that the attorney shall have the same right and power over such judgments, decrees, and executions to enforce his lien as his client had or may have, to the extent that may be necessary for the payment of his just fees and disbursements. In the instant case, the amount of the just fees has never been legally determined, and in the very nature of things, it could not be ascertained without an agreement between the parties or some evidence as to the reasonable value of the legal services. In other words, upon the record before us, the attorneys are legally entitled to a lien for the amount of their just fees, but there has never been any legal adjudication of that amount.

The method of procedure in a case like this is well stated in Corpus Juris, vol. 6, p. 794, in which it is said:

"Until a judgment is fully executed, the court retains jurisdiction of the subject matter and the parties for the purpose of hearing any motion affecting such judgment, and if the attorney desires to have his lien established and declared against such judgment he may apply to the court for that purpose. Thus in some jurisdictions the attorney's lien upon a judgment may be established and enforced upon an application to the court in the case wherein the judgment was rendered, and, although it is sometimes held that this lien may be enforced in an independent action by the attorney, yet ordinarily a motion in the cause is the proper remedy. The attorney need not become a party to the cause in order to enforce his lien upon the judgment, but in a proper case he may be permitted to intervene. In such a proceeding it would be proper practice for the attorney, on being admitted as a party, to file a petition in his own name against both plaintiff and defendant, setting forth the particulars of his claim and lien, so that if disputed by them answers could be filed, and the issues made up, as in other cases. * * * While it is not necessary to the existence of the lien that the amount due the attorney should be liquidated, yet the exact amount of the claim should be determined before the lien can be enforced. Ordinarily the amount of the attorney's fee and the question as to how much has been paid by the client thereon cannot be determined summarily on motion and affidavits, but should be ascertained on a reference. But while the court may refer the matter to a referee to take evidence, or even an account, and to report the same with his opinion to assist the court in deciding the questions arising, it cannot delegate the entire matter to the referee for final determination. And where a reference is authorized to determine the amount due under an agreement, the referee cannot ignore the agreement and ascertain the amount due on a quantum meruit. Where the facts are not disputed, however, the court may find the value of the attorney's services from the facts before it."

We are clearly of the opinion that the attorneys are legally entitled to a lien for the amount of their just fees, and that the filing of the notice of the lien in question in the manner in which it was done is a compliance with the statute and fully protects the legal rights of the attorneys as to the lien. But upon the facts disclosed in the record, we are clearly of the opinion that the appellant had a legal right to be heard as to the amount of the lien and as to

the amount only. In the absence of a specific written contract, the filing of the lien for the reasonable value of legal services does not within itself legally ascertain and determine the amount of the lien, in particular, where, as in this case, the amount is contested.

Upon the facts in this case, it devolved upon the attorneys claiming to both allege and prove that the amount is unpaid, reasonable and just, and upon that question the client has a legal right to be heard. Otherwise, he would be bound by the amount specified in the lien even though it was not just or it may have been paid.

Nothing said in this opinion should be construed as to saying what is the just amount of the attorney's lien. Upon that question we do not have or express an opinion.

The judgment of the lower court is reversed and the case remanded, with leave to each party to produce evidence as to the value of the services performed and the amount for which the attorneys should have a lien, and when that is judicially determined by the court, that execution may then issue as prayed for in the motion of June 10, 1927, without costs to either party. So ordered.

Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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