

**JUAN S. RUSTIA. PETITIONER, VS. QUIRICO ABETO ET AL.,
RESPONDENTS.***G.R. No. 47914. April 30, 1941*

Ponente: LAUREL, J.

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This is a petition filed by Attorney Juan S. Rustia for a writ of certiorari and mandamus to declare null and void certain orders of the Court of First Instance of Manila issued in civil case No. 55128, entitled "Intestate Estate of Antonio de la Riva," and to compel the respondents to return to the petitioner transfer certificate of title No. 21335 covering property of the intestate, as well as to recognize the retaining lien of the petitioner over the documents, papers, funds and properties of the deceased in the aforesaid intestate proceedings in the possession of the petitioner, especially over the sum of p16,990, which are the proceeds of the sale of the land covered by transfer certificate of title No. 21335, in favor of the Standard Vacuum Oil Company.

It appears that the petitioner rendered professional services as attorney of the respondent, Milagros Schmid, administratrix of the intestate estate of Antonio de la Riva in civil case No. 55138 of the Court of First Instance of Manila, before and after the latter's appointment as such administratrix, as well as of seven of, the children of the deceased who are now in the Philippines. When the petitioner was relieved as attorney for the administratrix and the heirs of the deceased, he presented a bill for professional services rendered in the sum of p32,330 on September 30, 1940, which claim was submitted for resolution of the lower court on October 26, 1940. The petitioner claimed not only the immediate payment of his honorarium, but also a retaining lien over all funds, documents and papers in his possession until he has been fully paid. Among the papers delivered by the respondent administratrix to the petitioner for the purpose of preparing and filing an amended inventory of the properties left by the deceased was transfer certificate of title No. 21335 of the register of deeds of the City of Manila, relating to a parcel of land alleged to be the conjugal property of the deceased and the respondent administratrix. Authority of the lower court having been previously secured for the sale of the land covered by said certificate of title, the land was sold to the Standard Vacuum Oil Company, in the total sum of p16,990. Upon showing of the respondent administratrix that the title certificate was in the possession of the petitioner, the respondent judge of the Court of First Instance of Manila issued an order on November 2, 1940, requiring the petitioner to deliver said certificate of title to the probate clerk of the Court of First Instance of Manila within three days from receipt of copy of said order. On November 5, 1940, the petitioner filed a motion for the reconsideration and amendment of the aforesaid order of November 2, 1940, based on the following grounds: (1) That he has a retaining lien over transfer certificate of title No. 21335 by virtue of his claim for professional fees which has a preferential right to payment as a lawful expense of administration superior to other posterior claims against the estate; (2) that in accordance with the order of the court, the proceeds of the sale, less P 2,810 which the administratrix was authorized to retain for the purpose of ejecting the tenants and paying the broker's commission, are to be deposited with the Philippine National Bank without any pronouncement as to the attorney's lien thereof, to the prejudice of the petitioner's rights; and (3) that the petitioner is willing to surrender the title certificate in question provided his lien is annotated on the transfer certificate of title to be issued in favor

of the Standard Vacuum Oil Company and the total amount of the proceeds of the sale are deposited in the Philippine National Bank, subject to his lien for professional services in preference to all posterior expenses of the estate. The respondent judge denied the motion for reconsideration and issued on November 12, 1940, another peremptory order to the petitioner to deliver the title certificate in question to the probate clerk within twenty-four (24) hours after receipt of notice thereof, under pain of being held in contempt of court. In compliance with the foregoing order, the petitioner delivered the certificate of title in question to the clerk of court on November 16, 1941, reserving in writing whatever right or recourse he might have in the premises.

Thereafter, on November 19, 1940, the petitioner instituted the present proceedings before this court, stressing the fact that on November 12, 1940, the respondent administratrix had filed another motion with the respondent judge praying among others, for the surrender of other documents and papers in his possession. Subsequently, on January 6, 1941, the petitioner filed a petition for the issuance of a writ of preliminary injunction, to restrain the respondent judge from enforcing his order of December 3, 1940, requiring the petitioner to deposit with the clerk of the Court of First Instance of Manila within forty-eight (48) hours after receipt of said order all the certificates of title, shares of stock, documents, books, papers, funds and other effects of the intestate estate in his possession, so that the latter may, in turn, deliver them to the respondent administratrix; as well as to enjoin the respondent judge from enforcing his order of January 3, 1941, denying petitioner's motion for the reconsideration of said order of December 3, 1940, and requiring the petitioner to comply with the aforesaid order within three days after notice thereof. This Court granted the preliminary writ of injunction on January 7, 1941. A motion to dissolve this preliminary injunction is pending.

That the petitioner rendered professional services in behalf of the respondent administratrix and other heirs of the deceased, Antonio de la Riva, is not disputed. We are not concerned with the disagreement between the petitioner and the respondent administratrix as to the value of the said professional services, nor with the alleged preferential right of the petitioner to the payment of his fees, as they are not at issue in the instant proceedings. Suffice it to state here that the petitioner has already interposed an appeal from the orders of December 3, 1940, and January 3, 1941, which orders, among other things, reduce the professional fees claimed by the petitioner from P32,330 to P2,000. Moreover, such dispute do not, and cannot, affect the general or retaining lien conceded to the petitioner by the first sentence of section 33 of No. 127 of the Rules of the Court, which provides that "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." The general, possessory, or retaining lien of an attorney attaches to all property, papers, books, documents, or securities of the client that come to the attorney professionally or in the course of his professional employment, such as a bond, a municipal warrant, a promissory note or other negotiable papers, an account, a voucher, a bank book, a letter or writing, a contract, insurance policy, or lease, a deed, or a mortgage. (5 Am. Jur., Attorneys-at-Law, sec. 210, pp. 388-389.)

It is to be observed that the petitioner is not only counsel of the respondent administratrix personally, but also in the latter's capacity as personal representative of the estate. Hence, the petitioner may exercise a retaining lien not only over the administratrix's personal papers but also over all the papers of the estate delivered by the administratrix to the petitioner in connection with the administration of the estate. As held in the Matter of Knapp, 85 N. Y. 234, an attorney may claim a lien on property belonging to an estate, placed in his hands by the representative of that estate in his representative capacity, for services rendered him in such capacity. (7 C. J. S., Attorneys-at-Law, sec. 227, p. 1169.)

The general or retaining lien of an attorney is dependent upon the possession and does not attach to anything not in the attorney's hands. It should be distinguished from the special or charging lien provided for in the last part of

section 33 of No. 127 of the Rules of Court which was created to "save the attorney's rights where he had been unable to get possession." The retaining lien, therefore, exists only so long as the attorney retains possession of the subject matter and expires when the possession ends. The retaining lien is only a passive right and cannot be actively enforced. It amounts to a mere right to retain the papers as against the client, until the attorney is fully paid. (Note, 51 Am. St. Rep. pp. 251, 255; 7 C. J. S., Attorneys-at-Law, sec. 217, p. 1161; sec. 233, p. 1199.)

And the courts, in the exercise of their exclusive and supervisory authority over attorneys as officers of the court, are bound to respect and protect the attorney's lien (*Ulanday vs. Manila Railroad Co.*, 45 Phil., 540) which, in the words of Chief Justice Marshall, "is necessary to preserve the decorum and respectability of the profession." So, it has been held that if the papers are improperly taken away from the custody of an attorney, his lien is not lost thereby (*Dicas v. Stockley*, 7 Car. & P. 587; Note, 31 Am. Dec. 759); and an attorney from whom papers, which he has a right to hold to secure payment for his services, have been taken by an order and decree of the court, thereby swelling the funds for the payment of creditors of the client, is entitled to be paid out of the funds realized from the sale of the client's property, the debts for which the papers were held. (*McDonald v. Railroad*, 93 Tenn. 281, 294; Note, 51 Am. St. Rep. 251-252.)

We are aware of the inconvenience that may accrue to the client because of the retention of important papers by an attorney claiming fees for services rendered, but this is the reason and essence of the lien. Withal, the courts may require the attorney to deliver up the papers in his possession which may serve to embarrass his client, provided the client files proper security for the attorney's compensation. This proceeds from the power of the courts to control its own officers and to compel attorneys to act equitably and fairly towards their clients. (*Chitton v. Pardon*, *Turner & Russel's Reports*, 301; *Richards v. Platel*, *Craig & Philipp's Report*, 79; *Matter of Jewitt*, 34 Beav. 22; *Matter of Galland*, 31 Chancery Division, 296; *Robinson v. Rogers*, 237 N. Y. 467, 472-473.)

It follows that unless and until the value of professional services rendered by the petitioner has been finally fixed and fully paid, the petitioner is entitled to be respected in the exercises of his general or retaining lien over all the papers, funds and documents delivered to him by the respondent administratrix in connection with the administration of the intestate estate of Antonio de la Riva in civil case No. 55128 of the Court of First Instance of Manila.

As against the orders of the respondent judge dated November 2, November 12 and December 3, 1940, and January 3, 1941, it is clear that the petitioner has no other plain, speedy and adequate remedy in the ordinary course of law than that of certiorari and mandamus. Petitioner's exception and notice of appeal from the aforesaid orders of the respondent judge do not afford speedy and adequate protection to the petitioner, for the reason that the order directing him to surrender all the funds, documents and papers to the clerk of court for delivery to the respondent administratrix is peremptory. We find that the respondent judge has abused his discretion, insofar as he has ordered the surrender of said papers by the petitioner without requiring the respondent administratrix to file sufficient security to protect petitioner's lien for his professional services. Certiorari lies to correct abuse of discretion. (*Chua Ke, et al. vs. Abeto, et al.*, 63 Phil., 539.) Mandamus will also lie to restore possession of documents of which the petitioner has been unlawfully deprived. (*Avarez vs. The Court of First Instance of Tayabas and the Anti-Usury Board*, G. R. No. 45357, January 29, 1937.) The writ of certiorari is, therefore, granted and the orders of the respondent judge dated November 2, November 12 and December 3, 1940, and January 3, 1941, are hereby annulled insofar as they require the petitioner to surrender to the clerk of the Court of First Instance of Manila for delivery to the respondent administratrix all the funds, documents and papers which have lawfully come into the possession of the petitioner as counsel for the respondent administratrix in Civil Case No. 55128 of the Court of First Instance of Manila. The writ of mandamus is also granted and the respondents are hereby ordered to return to the petitioner Transfer Certificate of Title No. 21335 of the Register of Deeds of the

City of Manila. The writ of preliminary injunction issued by this Court on January 7, 1941, is hereby made permanent, unless respondent administratrix files sufficient security for the payment of petitioner's professional fees under such terms and conditions as the lower court may deem reasonable and just. Costs are hereby taxed against the respondent administratrix. So ordered.

Avancena, C, J., Imperial, Diaz, and Horrilleno, JJ., concur.

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