

## **METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND ARTURO ALAFRIZ AND ASSOCIATES, RESPONDENTS.**

*G.R. Nos. 86100-03. January 23, 1990*

Ponente: REGALADO, J.

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### **REGALADO, J.:**

This petition for review on certiorari impugns the decision of the Court of Appeals in CA-G.R. Nos. 08265-08268[1] affirming the order of Branch 168, Regional Trial Court, National Capital Judicial Region, in Civil Cases Nos. 19123-28, 19136 and 19144, fixing attorney's fees and directing herein petitioner Metropolitan Bank and Trust Company (Metrobank, for brevity), as defendant in said civil cases, to pay its attorneys, herein private respondent Arturo Alafriz and Associates, movant therein, the amount of P936,000.00 as attorney's fees on a quantum meruit basis.

The records show that from March, 1974 to September, 1983, private respondent handled the above-mentioned civil cases before the then Court of First Instance of Pasig (Branches I, II, VI, X, XIII, XIX, XX and XXIV) in behalf of petitioner.[2] The civil cases were all for the declaration of nullity of certain deeds of sale, with damages.

The antecedent facts[3] which spawned the filing of said actions are undisputed and are hereinunder set forth as found by the trial court and adopted substantially in the decision of respondent court. A certain Celedonio Javier bought seven (7) parcels of land owned by Eustaquio Alejandro, et al., with a total area of about ten (10) hectares. These properties were thereafter mortgaged by Javier with the petitioner to secure a loan obligation of one Felix Angelo Bautista and/or International Hotel Corporation. The obligors having defaulted, petitioner foreclosed the mortgages after which certificates of sale were issued by the provincial sheriff in its favor as purchaser thereof. Subsequently, Alejandro, alleging deceit, fraud and misrepresentation committed against him by Javier in the sale of the parcels of land, brought suits against Javier, et al., and included petitioner as defendant therein.

It was during the pendency of these suits that these parcels of land were sold by petitioner to its sister corporation, Service Leasing Corporation on March 23, 1983 for the purported price of P600,000.00. On the same day, the properties were resold by the latter to Herby Commercial and Construction Corporation for the purported price of P2,500,000.00. Three months later, or on June 7, 1983, Herby mortgaged the same properties with Banco de Oro for P9,200,000.00. The lower court found that private respondent, did not have knowledge of these transfers and transactions.

As a consequence of the transfer of said parcels of land to Service Leasing Corporation, petitioner filed an urgent motion for substitution of party on July 28, 1983. Private respondent, on its part, filed on August 16, 1983 a verified motion to enter in the records of the aforesaid civil cases its charging lien, pursuant to Section 37, Rule 138 of the Rules of Court, equivalent to twenty-five percent (25%) of the actual and current market values of the litigated properties as its attorney's fees. Despite due notice, petitioner failed to appear and oppose said motion, as

a result of which the lower court granted the same and ordered the Register of Deeds of Rizal to annotate the attorney's liens on the certificates of title of the parcels of land.

Meanwhile, the plaintiffs Alejandro, et al. in the aforesaid civil cases, which had been consolidated and were pending before the Regional Trial Court of Pasig, filed a motion to dismiss their complaints therein, which motion the lower court granted with prejudice in its order dated September 5, 1983. On December 29, 1983, the same court ordered the Register of Deeds to annotate the attorney's liens of private respondent on the derivative titles which cancelled Transfer Certificates of Title Nos. 453093 to 453099 of the original seven (7) parcels of land hereinbefore adverted to.

On May 28, 1984, private respondent filed a motion to fix its attorney's fees, based on quantum meruit, which motion precipitated an exchange of arguments between the parties. On May 30, 1984, petitioner manifested that it had fully paid private respondent; the latter, in turn, countered that the amount of P50,000.00 given by petitioner could not be considered as full payment but merely a cash advance, including the amount of P14,000.00 paid to it on December 15, 1980. It further appears that private respondent attempted to arrange a compromise with petitioner in order to avoid suit, offering a compromise amount of P600,000.00 but the negotiations were unsuccessful.

Finally, on October 15, 1984, the court a quo issued the order assailed on appeal before respondent court, granting payment of attorney's fees to private respondent, under the following dispositive portion:

"PREMISES CONSIDERED, the motion is hereby granted and the Metropolitan Bank and Trust Company (METROBANK) and Herby Commercial and Construction Corporation[4] are hereby ordered to pay the movant Arturo Alafriz and Associates the amount of P936,000.00 as its proper, just and reasonable attorney's fees in these cases."[5]

On appeal, respondent court affirmed the order of the trial court in its decision promulgated on February 11, 1988. A motion for reconsideration, dated March 3, 1988, was filed by petitioner but the same was denied in a resolution promulgated on November 19, 1988, hence the present recourse.

The issues raised and submitted for determination in the present petition may be formulated thus: (1) whether or not private respondent is entitled to the enforcement of its charging lien for payment of its attorney's fees; (2) whether or not a separate civil suit is necessary for the enforcement of such lien; and (3) whether or not private respondent is entitled to twenty-five (25%) of the actual and current market values of the litigated properties on a quantum meruit basis.

On the first issue, petitioner avers that private respondent has no enforceable attorney's charging lien in the civil cases before the court below because the dismissal of the complaints therein were not, in the words of Section 37, Rule 138, judgments for the payment of money or executions issued in pursuance of such judgments.[6]

We agree with petitioner.

On the matter of attorney's liens, Section 37, Rule 138 provides:

"x x x He shall also have a lien to the same extent upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client, from and after 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 issuing such execution, and shall have caused written notice thereof to be delivered to his client and to the adverse party; and he shall have the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements."

Consequent to such provision, a charging lien, to be enforceable as security for the payment of attorney's fees, requires as a condition sine qua non a judgment for money and execution in pursuance of such judgment secured in the main action by the attorney in favor of his client. A lawyer may enforce his right to fees by filing the necessary petition as an incident in the main action in which his services were rendered when something is due his client in the action from which the fee is to be paid.[7]

In the case at bar, the civil cases below were dismissed upon the initiative of the plaintiffs "in view of the full satisfaction of their claims." [8] The dismissal order neither provided for any money judgment nor made any monetary award to any litigant, much less in favor of petitioner who was a defendant therein. This being so, private respondent's supposed charging lien is, under our rules, without any legal basis. It is flawed by the fact that there is nothing to generate it and to which it can attach in the same manner as an ordinary lien arises and attaches to real or personal property.

In point is *Morente vs. Fimalino*, [9] cited by petitioner in support of its position. In that case, movant-appellant attorney sought the payment of his fees from his client who was the defendant in a complaint for injunction which was dismissed by the trial court after the approval of an agreement entered into by the litigants. This Court held:

"x x x The defendant having suffered no actual damage by virtue of the issuance of a preliminary injunction, it follows that no sum can be awarded the defendant for damages. It becomes apparent, too, that no amount having been awarded the defendant, herein appellant's lien could not be enforced. The appellant, could, by appropriate action, collect his fees as attorney."

Private respondent would nevertheless insist that the lien attaches to the "proceeds of a judgment of whatever nature," [10] relying on the case of *Bacolod-Murcia Milling Co. Inc. vs. Henares* [11] and some American cases holding that the lien attaches to the judgment recovered by an attorney and the proceeds in whatever form they may be. [12]

The contention is without merit just as its reliance is misplaced. It is true that there are some American cases holding that the lien attaches even to properties in litigation. However, the statutory rules on which they are based and the factual situations involved therein are neither explained nor may it be said that they are of continuing validity as to be applicable in this jurisdiction. It cannot be gainsaid that legal concepts of foreign origin undergo a number of variegations or nuances upon adoption by other jurisdictions, especially those with variant legal systems.

In fact, the same source from which private respondent culled the American cases it cited expressly declares that "in the absence of a statute or of a special agreement providing otherwise, the general rule is that an attorney has no lien on the land of his client, notwithstanding such attorney has, with respect to the land in question, successfully prosecuted a suit to establish the title of his client thereto, recovered title or possession in a suit prosecuted by such client, or defended successfully such client's right and title against an unjust claim or an unwarranted attack," [13] as is the situation in the case at bar. This is an inescapable recognition that a contrary rule obtains in other jurisdictions thereby resulting in doctrinal rulings of converse or modulated import.

To repeat, since in our jurisdiction the applicable rule provides that a charging lien attaches only to judgments for money and executions in pursuance of such judgment, then it must be taken in *haec verba*. The language of the law is clear and unequivocal and, therefore, it must be taken to mean exactly what it says, barring any necessity for elaborate interpretation. [14]

Notably, the interpretation, literal as it may appear to be, is not without support in Philippine case law despite the dearth of cases on all fours with the present case. In *Caiña, et al. vs. Victoriano, et al.*, [15] the Court had the occasion to rule that "the lien of respondent is not of a nature which attaches to the property in litigation but is at most a personal claim enforceable by a writ of execution." In *Ampil vs. Julianio-Agrava, et al.*, [16] the Court once

again declared that a charging lien "presupposes that the attorney has secured a favorable money judgment for his client x x x." Further, in *Director of Lands vs. Ababa, et al.*,<sup>[17]</sup> we held that "(a) charging lien under Section 37, Rule 138 of the Revised Rules of Court is limited only to money judgments and not to judgments for the annulment of a contract or for delivery of real property as in the instant case."

Even in the *Bacolod-Murcia Milling* case, which we previously noted as cited by private respondent, there was an express declaration that "in this jurisdiction, the lien does not attach to the property in litigation."

Indeed, an attorney may acquire a lien for his compensation upon money due his client from the adverse party in any action or proceeding in which the attorney is employed, but such lien does not extend to land which is the subject matter of the litigation.<sup>[18]</sup> More specifically, an attorney merely defeating recovery against his client as a defendant is not entitled to a lien on the property involved in litigation for fees and the court has no power to fix the fee of an attorney defending the client's title to property already in the client's possession.<sup>[19]</sup>

While a client cannot defeat an attorney's right to his charging lien by dismissing the case, terminating the services of his counsel, waiving his cause or interest in favor of the adverse party or compromising his action,<sup>[20]</sup> this rule cannot find application here as the termination of the cases below was not at the instance of private respondent's client but of the opposing party.

The resolution of the second issue is accordingly subsumed in the preceding discussion which amply demonstrates that private respondent is not entitled to the enforcement of its charging lien.

Nonetheless, it bears mention at this juncture that an enforceable charging lien, duly recorded, is within the jurisdiction of the court trying the main case and this jurisdiction subsists until the lien is settled.<sup>[21]</sup> There is certainly no valid reason why the trial court cannot pass upon a petition to determine attorney's fees if the rule against multiplicity of suits is to be activated.<sup>[22]</sup> These decisional rules, however, apply only where the charging lien is valid and enforceable under the rules.

On the last issue, the Court refrains from resolving the same so as not to preempt or interfere with the authority and adjudicative facility of the proper court to hear and decide the controversy in a proper proceeding which may be brought by private respondent.

A petition for recovery of attorney's fees, either as a separate civil suit or as an incident in the main action, has to be prosecuted and the allegations therein established as any other money claim. The persons who are entitled to or who must pay attorney's fees have the right, to be heard upon the question of their propriety or amount.<sup>[23]</sup> Hence, the obvious necessity of a hearing is beyond cavil.

Besides, in fixing a reasonable compensation for the services rendered by a lawyer on the basis of quantum meruit, the elements to be considered are generally (1) the importance of the subject matter in controversy, (2) the extent of the services rendered, and (3) the professional standing of the lawyer.<sup>[24]</sup> These are aside from the several other considerations laid down by this Court in a number of decisions as pointed out by respondent court.<sup>[25]</sup> A determination of all these factors would indispensably require nothing less than a full-blown trial where private respondent can adduce evidence to establish its right to lawful attorney's fees and for petitioner to oppose or refute the same.

Nothing in this decision should, however, be misconstrued as imposing an unnecessary burden on private respondent in collecting the fees to which it may rightfully be entitled. But, as in the exercise of any other right conferred by law, the proper legal remedy should be availed of and the procedural rules duly observed to forestall and obviate the possibility of abuse or prejudice, or what may be misunderstood to be such, often to the undeserved discredit of the legal profession.

Law advocacy, it has been stressed, is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered. It is a calling that, unlike mercantile pursuits which enjoy a greater deal of freedom from government interference, is impressed with public interest, for which it is subject to State regulation.[26]

ACCORDINGLY, the instant petition for review is hereby GRANTED and the decision of respondent Court of Appeals of February 11, 1988 affirming the order of the trial court is hereby REVERSED and SET ASIDE, without prejudice to such appropriate proceedings as may be brought by private respondent to establish its right to attorney's fees and the amount thereof.

**SO ORDERED.**

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

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[1] Penned by Justice Florelia Castro-Bartolome, with Justices Ricardo L. Pronove, Jr. and Bonifacio A. Cacadac, Jr., concurring.

[2] Rollo, 27.

[3] Ibid., 27-28.

[4] The present petition is concerned only with one-half (1/2) of the disputed judgment of P936,000.00 or P468,000.00, rendered against petitioner. The one-half (1/2) part of said judgment rendered against Herby Commercial and Construction Corporation became final and executory after it failed to appeal seasonably.

[5] Rollo, 28-29.

[6] Petition, 10; Rollo, 16.

[7] Quirante vs. Hon. Intermediate Appellate Court, G.R. No. 73886, January 31, 1989, citing Lichauco vs. Hon. Court of Appeals, 63 SCRA 123 (1975) and Otto Gmur, Inc. vs. Revilla, 55 Phil. 627 (1936).

[8] Original Record, Volume II, 770-771.

[9] 71 Phil. 49 (1940).

[10] Comment, 7; Rollo, 72.

[11] 107 Phil. 560 (1960).

**[12] 7A C.J.S. 752.**

**[13] 7A C.J.S., 756.**

[14] Cebu Portland Cement Company vs. Municipality of Naga, Cebu, et al., 24 SCRA 708 (1968).

[15] 105 Phil. 194 (1959).

**[16] 34 SCRA 370 (1970).**

**[17] 88 SCRA 513 (1979).**

[18] Holmes vs. Waymire, 84 P 558 (1906).

[19] Wessinger vs. Sturkie, 77 F (2d) 751 (1935).

[20] Agpalo, Legal Ethics, 1989 ed., 371-372.

[21] Bacolod Murcia Milling Co., Inc. vs. Henares, *supra*.

[22] Palanca vs. Pecson, 94 Phil. 419 (1954).

[23] Agpalo, *op. cit.*, 346.

[24] Section 24 Rule 138, Rules of Court.

[25] Respondent Court admits in its decision that, in line with our decisions, the following factors have to be considered, to wit: the amount and character of services rendered, the labor, time and trouble involved, the nature and importance of the litigation, the responsibility involved, the amount of money or value of property affected, the skill and experience called for in the legal services, the professional and social standing of counsel, the results secured, and whether or not the fee is absolute or contingent (Rollo, 36).

[26] Canlas vs. Hon. Court of Appeals, et al., 164 SCRA 160 (1988), per Sarmiento, J.

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