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September 25, 2014

VIA OVERNIGHT DELIVERY

SUPREME COURT
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The Honorable Tani Cantil-Sakauye,
Chief Justice, and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

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MAILING ADDRESS:
P.O. Box 55020
Los Angeles, CA 90055-2020

213.627.2727 phone
213.833.6717 fax
LACBA.org

Re: Request for Depublication
(Cal. Rules of Court, Rule 8.1125(a))
Mojtahedi v. Vargas
228 Cal. App. 4th 974 (2012)
Court of Appeal, Second Appellate District, Division Three
Case Number B248551

Dear Honorable Justices:

This letter is submitted jointly on behalf of the Los Angeles County Bar Association, and its Professional Responsibility and Ethics Committee (collectively "LACBA"), and the Beverly Hills Bar Association ("BHBA") which respectfully request depublication of *Mojtahedi v. Vargas* ("*Mojtahedi*"). The opinion was filed August 8, 2014, and certified for partial publication. No petition for review has been filed. The depublication request is timely filed within 30 days after the opinion became final, on September 7, 2014. See Cal. R. Ct., R. 8.1125(a)(4).

As an alternative to depublication, LACBA and BHBA would also request the Supreme Court to consider sua sponte review of the decision, for the reasons set forth herein.

I. LACBA'S INTEREST

LACBA is one of the largest metropolitan voluntary bar associations in the nation and has nearly 21,000 members. The mission of the Los Angeles County Bar Association is to meet the professional needs of Los Angeles lawyers and advance the administration of justice. LACBA's interest in seeking depublication of *Mojtahedi* initiated with LACBA's Professional Responsibility and Ethics Committee, which is one of the oldest and most experienced legal ethics committees in the United States. Its membership is highly diverse, representing many different areas of legal practice. Many of its members have been active on the Committee for decades, and the Committee includes three members of the California Rules Revision Commission, present and former members and officers of the LACBA's Board of Trustees, present and former members (and at least five former chairs) of the State Bar of California's

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Standing Committee on Professional Responsibility and Conduct, members and a former chair of the State Bar of California's Standing Committee on Mandatory Fee Arbitration, the chair and two members of the Rules Revision Commission, two past presidents of the Association of Professional Responsibility Lawyers, a member of the ABA Standing Committee on Ethics and Professional Responsibility, an editor of the ABA/BNA Manual of Professional Responsibility, members of the American Law Institute and several full time or adjunct law professors. The Committee has published more ethics opinions than perhaps any other ethics committee in the United States.

BHBA is a voluntary bar association with more than 5,600 members who live or work on the westside of Los Angeles County. It is dedicated to improving the administration of justice, meeting the professional needs of Los Angeles lawyers, and serving the public. BHBA's core mission includes enhancing its members' ability to serve their clients and facilitating access to legal services.

LACBA and BHBA have a substantial interest in advancing the interests of the legal profession, as well as legal education, training of lawyers, providing a means of efficient and inexpensive resolution of attorney-client fee disputes, and respecting the rights of both lawyers and clients in the fair administration of justice.

II. REASONS FOR DEPULICATION

LACBA requests the depublication of *Mojtahedi* for the following reasons:

1. *Mojtahedi* reaches the conclusion, in a contingent fee case where the contingency occurs, that before predecessor counsel for the plaintiff may sue successor counsel to establish his or her lien and the reasonable value of his or her services, the predecessor counsel must first have sued the former client, in a separate legal action, even if the client does not dispute the validity of predecessor counsel's lien or his or her entitlement to a fee. This conclusion is based upon an erroneous interpretation of authorities that are distinguishable and inapplicable to the facts in *Mojtahedi*;
2. *Mojtahedi* ignores well established precedent and ethical rules concerning trust accounting requirements, disbursement of client settlement funds and procedures among the discharged and existing counsel to apportion a contingent legal fee between themselves in situations where the contingent fee is insufficient to meet the quantum meruit claims of both counsel;
3. *Mojtahedi*'s suggests that, where a client has discharged a contingent fee attorney and there is no association existing between the discharged attorney and the successor counsel, the discharged attorney must sue the client in an independent action to establish the validity and amount of a lawyer's lien before commencing suit against the successor attorney holding the funds. This suggestion is contrary to public policy and would lead to a multiplicity of unnecessary litigation, undue delay in the resolution of attorney fees disputes, injury to the relationships between attorneys and clients, loss of confidence in the legal profession and interference with the fair and prompt administration of justice; and

4. *Mojtahedi* elides the difference between a charging lien, which only is a method for securing the payment of legal fees, and a lawyer's right to fees whether or not secured by a charging lien. The appellate court ignores that a successor counsel who is contractually entitled to collect a contingency fee may owe an amount to predecessor counsel for the value of the earlier counsel's work and contribution to the accomplishment of the contingency, and to avoid unjust enrichment. In such circumstances, the client would owe no additional fee beyond the contingent fee that is being held by the successor counsel. Thus, typically the only issue is the value of the predecessor lawyers' contributions and how much successor counsel should compensate the earlier counsel for the reasonable value of his/her work, which are questions in which the client normally has no interest.

III. FACTS AND PROCEDURAL HISTORY

Mojtahedi involves a relatively small dispute between two lawyers regarding the division of a contingent fee. The two clients, who are not parties to the action, entered into a written attorney-client fee contract with the Plaintiff's law firm (*Mojtahedi*), which included a lien provision. The clients later discharged the law firm and retained other counsel (*Vargas*), who substituted into the case. (*Mojtahedi v. Vargas*, 228 Cal.App.4th 974, 976). *Mojtahedi* sent correspondence to the claims adjuster which asserted his claim of lien, and requested that any payment to the clients include his name as a payee. (*Id.*)

The case was settled, and two settlement checks were received by *Vargas*, each of which had *Mojtahedi*'s name on them as a payee. *Vargas* negotiated the checks and deposited them in his trust account. (*Id.*) Although not specifically mentioned in the opinion, Appellant's opening brief cites allegations that the negotiation of the two checks was entirely without *Mojtahedi*'s knowledge or authorization. (Appellant's opening brief, pp. 4-5).

Mojtahedi learned of the settlement and transmitted to *Vargas* his time log and a demand for attorneys' fees from the settlement amount. *Vargas* refused the demand and conveyed a different offer. *Mojtahedi* filed suit against *Vargas* and other defendants, for a variety of tort and statutory claims. (*Mojtahedi v. Vargas, supra*, at 976). *Mojtahedi* did not sue the clients, and did not bring a separate lawsuit to establish that his lien claim was enforceable. (*Id.*)

The trial court sustained demurrer without leave to amend on the grounds that *Mojtahedi* never established the enforceability or amount of his lien in a separate action against the clients. In particular, the court focused on the failure of Plaintiff to allege facts that *Mojtahedi* had first adjudicated the existence, value and enforceability of his lien. (*Id.*, at 976-977.)

The judgment of dismissal was affirmed. (*Id.*, at 980.) The Court of Appeal concluded that the attorney asserting a contractual lien over a recovery must first bring an independent action against the client to establish the enforceability and amount of his lien. (*Id.*, at 978-979.) The Court ruled that even if the attorney does not need to sue the client for breach of contract, he must bring a declaratory relief action against the client, and the failure to do so bars the attorney from asserting entitlement to a lien on the recovery. (*Id.*, at 979.)

The Court of Appeal does not address any of the issues arising out of Vargas' alleged receipt of settlement checks with Mojtahedi's name as a payee, his negotiation of those checks without Mojtahedi's knowledge or consent, or any of the ethical requirements of Rule 4-100 of the Rules of Professional Conduct ("RPC") to hold the funds or account to a former lawyer for the disputed share of the contingency fees held in trust.

IV. ARGUMENT

Mojtahedi involves a dispute between two attorneys over how to divide a single contingent fee. The clients are not parties. The summary of the case by the Court of Appeal does not reflect that the clients objected to the contingent fee or had any role at all in the dispute. (*Id.*, at 976, 978.) Appellant's brief asserts that there is no objection by the clients to date of the validity of the claim of lien. (Appellant's opening brief, at p. 11). There is no suggestion in *Mojtahedi* that the attorney-client contractual arrangements were anything other than bona fide.

The *Mojtahedi* court concludes: "Plaintiff must thus litigate with the clients to determine the reasonable cost of the services he provided to them. Plaintiff has omitted this essential step of establishing his entitlement to a particular portion of the settlement proceeds." (*Id.*, at 978.) Such a conclusion is likely to be cited time and again in future cases between lawyers over how to divide the contingency fee when a client is not a participant and has asserted no interest in the dispute. The public policy consequences will be devastating and potentially shatter public confidence in the legal profession, with lawyers being required time and again to sue clients where the client has done nothing wrong and asserts no position over the division of the fee. Such a requirement would delay resolution, interfere with the administration of justice, and add to a loss of public confidence in the legal profession by requiring lawyers to unnecessarily sue their clients.

LACBA and BHBA are significantly concerned not only about the public policy implications of requiring the clients to be sued in these circumstances, but also the Court of Appeal's failure to address established law on the allocation of a contingency fee among successive counsel, the allegations of the negotiation of a check without authorization of a payee, and the failure to account to a party having an interest in trust funds as required by RPC Rule 4-100.

The body of law pertaining to the payment of successive contingency lawyers' quantum meruit fee claims is well established. *Fracasse v. Brent*, 6 Cal.3d 784, 791 (1972); *Spires v. American Bus Lines*, 158 Cal.App. 3d 211 (1984). Generally, this approach stems from the concept that the subsequent attorney should not be unjustly enriched by receiving payment for that portion of the work that was completed by predecessor counsel, and that the predecessor counsel is entitled to quantum meruit. In *Spires*, the court held that when the contingency fee is insufficient to meet all fee claims of all discharged and existing attorneys, it should be distributed to each claimant in proportion to the reasonable value of their services. "Such a formula insures that each attorney is compensated in accordance with the work performed, as contemplated by *Fracasse*, while assuring that the client will not be forced to make a double payment of fees." *Id.*, at 216).

The State Bar of California’s Committee on Mandatory Fee Arbitration trains its fee arbitrators in the division of fees among successive contingency fee counsel, as described in its Arbitration Advisory 1997-03 entitled “Fee Arbitration Issues Involving Contingency Fees.” This opinion sets forth traditional procedures for determining the amount of contingent fees to which successive lawyers are entitled, and provides valuable guidance to lawyers and fee arbitrators. See also, *Cazares v. Saenz*, 208 Cal.App.3d 279 (1989), explaining procedures for proration of the *quantum meruit* share of a contingent fee in a dispute between associated counsel. The Court of Appeal in *Mojtahedi* does not address any of such procedures or any of the law concerning division of contingent fees.

The overwhelmingly typical dispute between the former attorney and the current attorney is the payment of the discharged attorney’s compensation from the contingent recovery. The client rarely objects to the payment of quantum meruit to the predecessor lawyer, and in the absence of such objection, the two lawyers should be permitted to litigate the claim among themselves, and not burden the client with an unnecessary lawsuit.

In situations where the contingent fee is insufficient to satisfy the quantum meruit claims of each attorney, the existence of a formal lien under the contract is irrelevant, as case law already establishes in that context that the two attorneys are to divide the fee on principles of quantum meruit.

The lawyer receiving the settlement funds would have an obligation under RPC Rule 4-100 and related case law to hold in trust the disputed funds until the dispute is resolved. California law provides that when a lawyer accepts a payment on behalf of his or her client from a third party, which the lawyer agrees to hold in trust until some later event, the attorney holds that money as a fiduciary for the third party, despite the fact that there is no attorney-client relationship. See, for example, *Guzzetta v. State Bar*, 43 Cal.3d 962 (1987), *Crooks v. State Bar*, 3 Cal.3d 346 (1970), and *Johnstone v. State Bar*, 64 Cal.2d 153 (1966). A lawyer’s failure to fulfill this obligation serves as the basis for both civil and disciplinary action. See also *In re Mortgage & Realty Trust v. Zim Co.*, 195 B.R. 740 (C.D. Cal. 1996) (lawyer acting as a trustee has fiduciary duties) and *In the Matter of Respondent P*, 2 Cal. State Bar Ct. Rptr. 622, 632 (Rev. Dept. 1993) (“An attorney holding funds for a person who is not the attorney’s client must comply with the same fiduciary duties in dealing with such funds as if an attorney-client relationship existed. (citations omitted)”). Since the disputed funds are usually held by the last attorney, it makes practical sense for the litigation of the fee dispute to be between only this attorney and predecessor counsel.

Here, the Court of Appeal did not address Vargas’ alleged negotiation of a check payable to Mojtahedi, without authorization. It did not address a lawyer’s fiduciary obligation to account for disputed funds in his trust account, or the disposition of such monies. By omitting discussion of such ethical obligations the opinion does a disservice to the legal profession and the public.

The opinion does not say whether the funds remain in Vargas’ account or if he has taken them as his fee. If the funds do not remain in trust, there may have been a serious ethical transgression under RPC Rule 4-100. If Vargas has taken possession of 100% of the attorney’s

fee portion of the recovery, there may be a question of the receipt of an unconscionable fee under Rule 4-200. These ethical issues are not addressed.

As for the question of jurisdiction, the law is well developed that a trial court *in the underlying matter which results in a judgment for the client* does not have jurisdiction to decide the validity or amount of a former attorney's lien against that judgment because the lawyer is not a party to the action. In that situation, the attorney must bring a separate action to establish the validity and amount of the client's lien. See *Carroll v. Interstate Brands Corporation*, 99 Cal.App.4th 1168, 1173 (2002), and cases cited therein.

Public policy supports the requirement that where the attorney and client have a dispute, the attorney must bring a separate action against the client, rather than allowing the lawyer to establish the validity or amount of his or her lien in the underlying action that resulted in the judgment upon which the lien is asserted. In such a dispute between attorney and client, attorney-client privilege might be waived, necessitating disclosure of otherwise privileged information. (Evid. Code §958; and Bus. & Prof. Code §6149). Clients should not be made to reveal privileged or confidential information to an adversary of the client in the underlying litigation in order to address, defend or even support the lien claims of their present and former attorneys. Also, the attorney is not a party to the underlying litigation, and the trial court therefore lacks jurisdiction over the attorney, except in limited situations, to resolve the dispute.

However, that is not the situation that existed in *Mojtahedi*. Instead, this was a traditional dispute between two contingency attorneys, both of whom were parties, over how to divide the fee. It was not the underlying action; it was a separate action between the two lawyers. There are strong policy reasons not to delay the resolution of attorney-to-attorney fee disputes. Contingency attorneys have often been waiting a long time, sometimes years after financing the case, to obtain compensation from its resolution, often at considerable expense in terms of advancement of time and overhead costs. The requirement that lawyers must first sue the client before they may resolve claims among the attorneys over the fee is likely to add years of further delay. The policy of the law should favor an expeditious resolution of disputes between attorneys over contingent fees where the client is not concerned with the outcome.

In the cases relied upon by the *Mojtahedi* court to reach the conclusion that the discharged lawyer must first bring an action against the client, the client was either a party or had a stake in the outcome, and the lawyer was *not* a party. Reliance upon those cases overlooks the fact that the dispute here between the two lawyers was not "the underlying action" and the two lawyers were *the* parties to the dispute. The trial court plainly had jurisdiction over them.

The Court of Appeal, relying heavily upon *Brown v. Superior Court*, 116 Cal.App.4th 320 (2004), at 328-330, reasoned that it was irrelevant that there is no actual dispute between the attorney and client. *Brown* decided a dispute over priority of liens asserted between an attorney for a party and a judgment lien creditor, concluding that the trial court was without jurisdiction to decide a motion to enforce lien priorities because the attorney was not a party to the action. The *Brown* court decided that it was of no consequence that the client did not dispute the attorney lien, because of the absence of the attorney as a necessary party precluded the court from having jurisdiction. Unlike in *Brown*, in this instance, the trial court in *Mojtahedi* unquestionably had

jurisdiction over all necessary parties. The Court of Appeal's reliance upon *Brown* to decide that the trial court lacked jurisdiction was misplaced because the lawsuit by *Mojtahedi* was not the underlying action, and both lawyers were parties to the action.

This dispute between the successive counsels should not require client participation unless the client has a stake in disputing the fee, or asserts an entitlement to the funds. The client is not entitled to the contingent fee portion of the recovery and, absent some accusation of lawyer misconduct, has no interest in it.

For these reasons, this Court should act in the protection of the interests of clients, the integrity of the legal profession, the proper handling of funds held in trust, the interests of justice and the speedy resolution of disputes to depublish the *Mojtahedi* decision. In the alternative, the Court should accept the matter for review of its own accord.

Respectfully submitted,

LOS ANGELES COUNTY BAR ASSOCIATION
and BEVERLY HILLS BAR ASSOCIATION

By: 

Linda L. Curtis, President

228 Cal.App.4th 974, 176 Cal.Rptr.3d 313, 14 Cal. Daily Op. Serv. 9094, 2014 Daily Journal D.A.R. 10,588
 (Cite as: 228 Cal.App.4th 974, 176 Cal.Rptr.3d 313)

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Court of Appeal,
 Second District, Division 3, California.
 Michael M. **MOJTAHEDI**, Plaintiff and
 Appellant,
 v.
 Fernando D. **VARGAS**, Defendant and Re-
 spondent.

B248551

Filed August 8, 2014
 Certified for Partial Publication. FN*

FN* Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication with the exception of parts 2 and 3.

Background: Clients' initial attorney brought action against clients' subsequent attorney, seeking to recover portion of settlement checks. The Superior Court, Los Angeles County, No. TC026549, William Barry, J., sustained subsequent attorney's demurrer without leave to amend, and initial attorney appealed.

Holding: The Court of Appeal, Kitching, J., held that initial attorney was required to bring an independent action against clients to establish the existence, amount, and enforceability of attorney's fee lien prior to bringing action against subsequent attorney

Affirmed.

West Headnotes

[1] Attorney And Client 45 ↪174

45 Attorney and Client
 45V Lien
 45k173 Right to Lien

45k174 k. In general. Most Cited Cases

Unlike other liens, an attorney's lien is not created by the mere fact that an attorney has performed services in a case.

[2] Attorney And Client 45 ↪176

45 Attorney and Client
 45V Lien

45k173 Right to Lien

45k176 k. Effect of contracts.

Most Cited Cases

An attorney's lien is created only by an attorney fee contract with an express provision regarding the lien or by implication in a retainer agreement that provides the attorney will be paid for services rendered from the judgment itself.

[3] Attorney And Client 45 ↪192(2)

45 Attorney and Client
 45V Lien

45k192 Enforcement

45k192(2) k. Proceedings. Most

Cited Cases

After the client obtains a judgment, the attorney must bring a separate, independent action against the client to establish the existence of the attorney's lien, to determine the amount of the lien, and to enforce it.

[4] Attorney And Client 45 ↪192(2)

45 Attorney and Client
 45V Lien

45k192 Enforcement

45k192(2) k. Proceedings. Most

Cited Cases

Clients' initial attorney was required to bring an independent action against clients to establish the existence, amount, and enforceability of his attorney's fee lien prior to bringing action against clients' sub-

sequent attorney seeking percentage of settlement funds held in client trust account, even if attorney's lien language in client agreement between clients and initial attorney allowed for such a lien and initial attorney asserted there was no actual dispute between him and clients regarding the amount owed to him.

See 1 Witkin, Cal. Procedure (5th ed. 2008) Attorneys, § 166 et seq.

APPEAL from judgment of the Superior Court of Los Angeles County, William Barry, Judge. Affirmed. (Super. Ct. No. TC026549)Kazerouni Law Group, APC and S. MohammadReza Kazerouni, Costa Mesa, for Plaintiff and Appellant.

Law Office of Lawrence M. Lebowsky and Lawrence M. Lebowsky, Los Angeles, for Defendant and Respondent.

KITCHING, J.

*975 INTRODUCTION

Plaintiff Michael M. Mojtahedi, the first of two attorneys to represent a pair of clients in a personal injury matter, appeals the trial court's judgment *976 sustaining the demurrer to his second amended complaint without leave to amend. In the underlying matter, Plaintiff represented the clients until Defendant Fernando D. Vargas substituted in as new counsel. Defendant obtained a settlement payment for the clients, which he deposited in his client trust fund account. Plaintiff never brought an action against his former clients to establish the reasonable cost of his attorney fees, and instead unsuccessfully demanded payment of attorney fees from Defendant. Plaintiff subsequently sued Defendant on the theory that he was owed a portion of the settlement checks. The trial court sustained Defendant's demurrer to the second amended complaint because Plaintiff failed to estab-

lish the existence, amount, and enforceability of his attorney fees lien in an independent action against the clients. We affirm for the same reasons.

FACTS AND PROCEDURAL BACKGROUND

In February 2010, Vincente Ramirez Vera and Josefina Ramirez (collectively, the clients) hired Plaintiff and his firm to represent them in a dispute with a claims adjuster regarding personal injuries sustained in an automobile accident. The clients entered into a written attorney-client fee contract with Plaintiff's law firm, which included a provision allowing the firm to assert a lien against all claims or causes of action that were subject to Plaintiff's representation under the contract. Plaintiff represented the clients for about eight months. Defendant Fernando D. Vargas then contacted Plaintiff, advising him that he was substituting into the case as new counsel for the clients. Shortly thereafter, Plaintiff wrote to the claims adjuster, indicating that he had a lien for attorney's fees on future payments to the clients and requesting that any payment to the clients include Plaintiff as a payee.

Defendant settled the case in August 2011, and deposited the settlement checks into his client trust fund account. Each **315 check was made out to the clients, Plaintiff's law office, and Defendant's law office as payees. When Plaintiff learned of the settlement payment, he sent a log of his time spent on the case and a letter to Defendant demanding \$4,407 in attorney's fees to be paid to him from the \$14,500 settlement amount. In response, Defendant offered Plaintiff \$2,000 for his attorney fees. Plaintiff refused that offer and brought the present suit against Defendant, the claims adjuster, and the two banks that

issued and deposited the settlement checks for fraud, violation of Commercial Code sections 3110(d) and 3420, negligence, and tortious interference with prospective economic advantage. Plaintiff never sued his former clients to establish the amount of his lien or that the lien was enforceable.

Defendant demurred to the second amended complaint on the grounds that Plaintiff did not have an enforceable lien because he never established the *977 lien amount or its enforceability in a separate action against the clients. The trial court sustained Defendant's demurrer without leave to amend, relying on *Valenta v. Regents of University of California* (1991) 231 Cal.App.3d 1465, 1470, 282 Cal.Rptr. 812 (*Valenta*), *Hansen v. Jacobsen* (1986) 186 Cal.App.3d 350, 356, 230 Cal.Rptr. 580 (*Hansen*), and *Bandy v. Mt. Diablo Unified Sch. Dist.* (1976) 56 Cal.App.3d 230, 234, 126 Cal.Rptr. 890 (*Bandy*), all of which hold that a previously discharged attorney must file an independent action against his client in order to enforce a contractual attorney fees lien.

DISCUSSION

Plaintiff asserts that the court erred in sustaining the demurrer, arguing that he does not need to file an independent action against his client to enforce the lien and asserting that the trial court's ruling was contrary to case law and public policy. "On appeal from a judgment after a demurrer is sustained without leave to amend, we review the trial court's ruling de novo, exercising our independent judgment on whether the complaint states a cause of action." (*Lincoln Property Co., N.C., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 911, 41 Cal.Rptr.3d 39.) We treat the demurrer as admitting all properly pleaded facts and those that are judicially notice-

able, but we do not assume the truth of contentions, deductions or conclusions of fact or law. (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 814, 107 Cal.Rptr.2d 369, 23 P.3d 601; *Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 180, 81 Cal.Rptr.2d 324 (*Breneric*)). "We give the complaint a reasonable interpretation, reading it as a whole and its parts in their context, to determine whether the complaint states facts sufficient to constitute a cause of action." (*Breneric*, at p. 180, 81 Cal.Rptr.2d 324.)

1. Plaintiff Must Establish the Existence, Amount, and Enforceability of the Lien in an Independent Action Against His Clients

At issue is whether Plaintiff can enforce an attorney fees lien solely via an action against Defendant, who holds the settlement funds in his client trust account. Without an enforceable lien, Plaintiff cannot prove that he has a right to a portion of the settlement money.

[1][2][3]Unlike other liens, "an attorney's lien is not created by the mere fact that an attorney has performed services in a case." (*Carroll v. Interstate Brands Corp.* (2002) 99 Cal.App.4th 1168, 1172, 121 Cal.Rptr.2d 532 (*Carroll*)). An attorney's lien is created only by an attorney fee contract with an express provision regarding the lien or by **316 implication in a retainer agreement that provides the attorney will be paid for services rendered from the judgment itself. (*Ibid.*) It is well established that "[a]fter the client *978 obtains a judgment, the attorney must bring a separate, independent action against the client to establish the existence of the lien, to determine the amount of the lien, and to enforce it." (*Brown v. Superior Court* (2004) 116 Cal.App.4th 320, 328, 9 Cal.Rptr.3d

(Cite as: 228 Cal.App.4th 974, 176 Cal.Rptr.3d 313)

912 (*Brown*) quoting, *Carroll v. Interstate Brands Corp.*, *supra*, 99 Cal.App.4th at p. 1173, 121 Cal.Rptr.2d 532; accord, *Valenta, supra*, 231 Cal.App.3d at p. 1470, 282 Cal.Rptr. 812; *Hansen, supra*, 186 Cal.App.3d at p. 356, 230 Cal.Rptr. 580; *Bandy, supra*, 56 Cal.App.3d at p. 234, 126 Cal.Rptr. 890; *Hendricks, supra*, 197 Cal.App.2d at p. 589, 17 Cal.Rptr. 364.)

[4]Here, Plaintiff alleges that he has a contract with terms that would create a lien. Nonetheless, Plaintiff failed to allege facts establishing that he adjudicated the existence, value, or enforceability of his lien. Plaintiff merely asserts that he has a “detailed log stating a lien amount of \$4,407.00 based on pre-substitution time and costs expended.” A log of Plaintiff’s time, although useful to adjudicate the reasonable value of Plaintiff’s services in a separate action against the clients, is insufficient to establish that Plaintiff is entitled to a particular amount of the settlement money in his suit against Defendant. Plaintiff admits that he never brought a separate action against his clients to litigate those issues. Therefore, he has yet to establish the value or validity of his purported lien.

In asserting that he does not need to bring a separate action against the clients, Plaintiff attempts to distinguish his case from *Valenta*, *Hansen*, and *Bandy*. Plaintiff states that unlike those cases, Plaintiff has not filed a lien or a notice of lien in any pending action, Plaintiff’s former clients’ personal injury matter has been resolved, and Plaintiff’s attempt to recover his lien is ripe. All of these differences are insignificant and fail to alter the applicability of the central principle conveyed by *Valenta*, *Hansen*, and *Bandy*: the attorney’s lien is only enforceable after the attorney adjudic-

ates the value and validity of the lien in a separate action against his client.

Plaintiff provided the services to the clients, not to Defendant. If successful in a declaratory relief action regarding the reasonable value of his services, Plaintiff’s fees will be paid out of the clients’ settlement proceeds. (*Hendricks, supra*, 197 Cal.App.2d at p. 589, 17 Cal.Rptr. 364 [“An attorney’s contingent fee contract ... only gives him a lien on his client’s recovery.”].) Plaintiff must thus litigate with the clients to determine the reasonable cost of the services he provided to them. Plaintiff has omitted this essential step of establishing his entitlement to a particular portion of the settlement proceeds.

To the extent that Plaintiff distinguishes the present matter from the above-mentioned case law by asserting that there is no actual dispute between him and his clients regarding the amount owed to him, we conclude that even if this is true, it is irrelevant. The Court of Appeal addressed this identical issue *979 in *Brown, supra*, 116 Cal.App.4th at pages 328–330, 9 Cal.Rptr.3d 912. There, an attorney sought to establish the priority of his contractual attorney fees lien over the lien of a judgment creditor. (*Id.* at pp. 323–324, 9 Cal.Rptr.3d 912.) The *Brown* Court held that the attorney had to bring an independent action against his client to establish the enforceability and amount of his contractual lien, and could not simply intervene and address that issue in a dispute between the creditor and his client. (*Id.* at p. 324, 9 Cal.Rptr.3d 912.) Notably, the attorney seeking to enforce his lien attempted**317 to distinguish his case from prior cases and avoid suing his client by arguing that those cases involved a dispute between the attorney and the client, and in contrast, his case

(Cite as: 228 Cal.App.4th 974, 176 Cal.Rptr.3d 313)

did not. There, the *Brown* Court stated that “[w]hile it may be true that *Carroll* and its predecessors involved attorney-client disputes, the rationale of those cases is not limited to such disputes.” (*Id.* at p. 329, 9 Cal.Rptr.3d 912.) Without first establishing a right to any portion of his client's settlement proceeds, Plaintiff in this case lacks any basis to assert that Defendant fraudulently withheld any money from him.

Plaintiff further argues that to require an attorney to institute an action against his former clients in order to enforce his lien would “have a chilling effect on attorney-client relationships.” The Court of Appeal also explained why this was incorrect in *Brown, supra*, 116 Cal.App.4th at page 333, 9 Cal.Rptr.3d 912. There, the attorney argued that requiring him to bring a separate action against his client to enforce the lien, when there was no conflict or dispute between him and the client regarding the fees, “would require him to violate the Rules of Professional Conduct and the Business and Professions Code and commit a tort because such an action would be ‘without just cause.’ ” (*Ibid.*) The *Brown* Court explained that this was not so: “[b]y requiring [the attorney] to bring a separate action to enforce his lien, we do not mean to suggest that he must sue [his client] for breach of contract.” (*Ibid.*) The Court stated that given the lack of any controversy between the attorney and client, a declaratory relief action under Code of Civil Procedure section 1060, seeking a declaration of the attorney's rights with respect to his client, was appropriate. (*Ibid.*)

Likewise, by seeking a declaration regarding the reasonable value of his services rendered, Plaintiff will address the issue without subjecting his former clients to damages. Importantly, this procedure also

gives the court an opportunity to evaluate the value and quantity of Plaintiff's services with the relevant parties: Plaintiff and his former clients.

Despite case law requiring Plaintiff to bring a separate declaratory relief action against the clients, Plaintiff has not sought such relief. Plaintiff therefore has failed to establish the existence, amount, and enforceability of his lien on the settlement money.

*980 2.-3. FN**

FN** See footnote *, *ante*.

DISPOSITION

The judgment is affirmed. Defendant Fernando D. Vargas is awarded his costs on appeal.

We concur:
KLEIN, P.J.
ALDRICH, J.

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