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FIRST DIVISION

[G.R. No. L-26096. February 27, 1979]

THE DIRECTOR OF LANDS, *petitioner*, *vs.* **SILVESTRA ABABA,** ***ET AL.***, *claimants*, **JUAN LARRAZABAL, MARTA C. DE LARRAZABAL, MAXIMO ABARQUEZ and ANASTACIA CABIGAS,** *petitioners-appellants*, **ALBERTO FERNANDEZ,** *adverse claimant-appellee.*

SYLLABUS

1. **LEGAL ETHICA; ATTORNEY-CLIENT RELATIONSHIP; CONTINGENT FEES; PROHIBITION UNDER ARTICLE 1491, NEW CIVIL CODE, CONSTRUED.** — The prohibition in Article 1491 of the New Civil Code applies only to a sale or assignment to the lawyer by his client of the property which is the subject of litigation. For the prohibition to operate, the sale or assignment of the property must take place during the pendency of the litigation involving the property. The prohibition does not apply to cases where after completion of litigation the lawyer accepts on account of his fee, an interest in the assets realized by the litigation. There is a clear distinction between such cases and one in which the lawyer speculates on the outcome of the matter in which he is employed.

2. **ID.; ID.; ID.; ID.; SCHOOLS OF THOUGHT.** — Spanish civilists differ in their views on whether or not a contingent fee contract (quota litis agreement) is covered by Article 1491, with Manresa advancing that it is covered and Castoln maintaining that it is not covered. The Supreme Court of Spain, in its sentencia of 12 November 1917, has ruled that Article 1459 of the Spanish Civil Code (Article 1491 of our Civil Code) does not apply to a contract for a contingent fee because it is not contrary to morals or to law.

3. **ID.; ID.; ID.; SUBJECT TO THE SUPERVISION OF THE COURT.** — Contingent fees are not prohibited in the Philippines. They are impliedly sanctioned by law and are subject to the

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supervision of the court in order that clients may be protected from unjust charges.

4. **ID.; ID.; ID.; REASON FOR ALLOWANCE.** — The reason for allowing compensation for professional services based on contingent fees is that of a person could not secure counsel by a promise of large fees in case of success, to be derived from the subject matter of the suit, it would often place the poor in such a condition as to amount to a practical denial of justice. It not infrequently happens that persons are injured through the negligence or willful misconduct of others, but by reason of poverty are unable to employ counsel to assert their rights. In such event their only means of redress lies in gratuitous service, which is rarely given, or in their ability to find someone who will conduct the case for a contingent fee. That relations of this kind are often abused by speculative attorneys or that suits of this character are turned into a sort of commercial traffic by the lawyer does not destroy the beneficial result to one who is so poor to employ counsel.

5. **ID.; ID.; ID.; CONTRACT SUBJECT TO SUPERVISION OF COURTS.** — A contingent fee contract is always subject to the supervision of the courts with respect to the stipulated amount and may be reduced or nullified. So that in the event that there is any undue influence or fraud in the execution of the contract or that the fee is excessive, the client is not without remedy because the court will amply protect him.

6. **ID.; ID.; ID.; ID.; WHEN VALID.** — Canon 13 of the Canons of Professional Ethics expressly recognizes contingent fees by way of exception to Canon 10. For while Canon 10 prohibits a lawyer from purchasing ". . . any interest in the subject matter of the litigation he is conducting", Canon 13, on the other hand, allows reasonable contingent fee contract, thus: "A contract for a contingent fee where sanctioned by law, should be reasonable under all circumstances of the case, including the risk and uncertainty of the compensation, but should always be subject to the supervision of a court, as to its reasonableness." The distinction is between buying an interest in the litigation as a speculation, which Canon 10 condemns, and agreeing, in a case which the lawyer undertakes primarily in his professional capacity, to accept his compensation contingent on the outcome.

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7. **ID.; CANON OF PROFESSIONAL ETHICS; RECOGNIZED.** — Canons of Professional Ethics have already received judicial recognition by being cited and applied by the Supreme Court of the Philippines in its opinion. And they have likewise been considered sources of Legal Ethics. More importantly, the American Bar Association, speaking through Chairman Howe of the Ethics Committee, opined that "The Canons of Professional Ethics are legislative expressions of professional opinion." Therefore, the Canons have some binding effect.

8. **CIVIL LAW; LAND REGISTRATION; REGISTRATION OF INTEREST OR ADVERSE CLAIM, ALLOWED.** — An adverse claim may be registered only by whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, if no other provision is made in this Act (496) for registering the same. A contract for a contingent fee being valid, it vested in the adverse-claimant an interest or right over the lots in question to the extent of one-half thereof. The interest become vested in adverse-claimant after the case was won on appeal because only then did the assignment of the one half portion of the lots in question became effective and binding. Since the interest or claim of counsel in the lots in question arose long after the original registration, there is no other provision of the Land Registration Act under which the interest or claim may be registered except as an adverse claim under Section 110 of the Act. The interest or claim cannot be registered as an attorney's charging lien. There being substantial compliance with Section 110 of Act 496, the registration of the adverse claim is valid. Being valid, its registration should not be canceled because it is only when such claim is found unmeritorious that the registration thereof may be canceled.

9. **ID.; ID.; ID.; EFFECT OF ANNOTATION.** — The annotation of an adverse claim is an measure designed to protect the interest of a person over a piece of real property where the registration of such interest or right is not otherwise provided for by the Land Registration Act, and serves as a notice and warning to third parties dealing with said property that someone is claiming an interest in the same or a better right than the registered owner thereof.

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APPEARANCES OF COUNSEL

Juanito Ll. Abao for petitioners-appellants.
Alberto B. Fernandez in his own behalf.

D E C I S I O N

MAKASIAR, *J.*:

This is an appeal from the order of the Court of First Instance of Cebu dated March 19, 1966 denying the petition for the cancellation of an adverse claim registered by the adverse claimant on the transfer certificate of title of the petitioners.

The adverse claimant, Atty. Alberto B. Fernandez, was retained as counsel by petitioner, Maximo Abarquez, in Civil Case No. R-6573 of the Court of First Instance of Cebu, entitled "*Maximo Abarquez vs. Agripina Abarquez,*" for the annulment of a contract of sale with right of repurchase and for the recovery of the land which was the subject matter thereof. The Court of First Instance of Cebu rendered a decision on May 29, 1961 adverse to the petitioner and so he appealed to the Court of Appeals.

Litigating as a pauper in the lower court and engaging the services of his lawyer on a contingent basis, petitioner, unable to compensate his lawyer whom he also retained for his appeal, executed a document on June 10, 1961 in the Cebuano-Visayan dialect whereby he obliged himself to give to his lawyer or one-half (½) of whatever he might recover from Lots 5600 and 5602 should the appeal prosper. The contents of the document as translated are as follows:

"AGREEMENT

"KNOW ALL MEN BY THESE PRESENTS:

"That I, MAXIMO ABARQUEZ, plaintiff in Case No. R-6573 of the Court of First Instance of Cebu, make known through this

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agreement that for the services rendered by Atty. Alberto B. Fernandez, who is my lawyer in this case, if the appeal is won up to the Supreme Court, I promise and will guarantee that I will give to said lawyer one-half (½) of what I may recover from the estate of my father in Lots No. 5600 and 5602 which are located at Bulacao, Pardo, City of Cebu. That with respect to any money which may be adjudged to me from Agripina Abarquez, except 'Attorney's Fees', the same shall pertain to me and not to said lawyer.

"IN WITNESS WHEREOF, I have caused my right thumbmark to be affixed hereto this 10th of June, 1961, at the City of Cebu.

THUMBMARK

MAXIMO ABARQUEZ"

(p. 5, Petitioner-Appellant's Brief, p. 26, rec.).

The real property sought to be recovered in Civil Case No. R-6573 was actually the share of the petitioner in Lots 5600 and 5602, which were part of the estate of his deceased parents and which were partitioned among the heirs which included petitioner Maximo Abarquez and his elder sister, Agripina Abarquez, the defendant in said civil case.

This partition was made pursuant to a project of partition approved by the Court which provided, among others, that Lots Nos. 5600 and 5602 were to be divided into three equal parts, one third of which shall be given to Maximo Abarquez. However, Agripina Abarquez claimed the share of her brother, stating that the latter executed an instrument of *pacto de retro* prior to the partition conveying to her any or all rights in the estate of their parents. Petitioner discovered later that the claim of his sister over his share was based on an instrument he was induced to sign prior to the partition, an instrument he believed all along to be a mere acknowledgment of the receipt of ₱700.00 which his sister gave to him as a consideration for taking care of their father during the latter's illness and never an instrument of *pacto de retro*. Hence, he instituted an action to annul the alleged instrument of *pacto de retro*.

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The Court of Appeals in a decision promulgated on August 27, 1963 reversed the decision of the lower court and annulled the deed of *pacto de retro*. Appellee Agripina Abarquez filed a motion for reconsideration but the same was denied in a resolution dated January 7, 1964 (p. 56, Record on Appeal; p. 13, rec.) and the judgment became final and executory on January 22, 1964.

Subsequently, Transfer Certificate of Title No. 31841 was issued on May 19, 1965 in the name of Maximo Abarquez, married to Anastacia Cabigas, over his adjudged share in Lots Nos. 5600 and 5602 containing an area of 4,085 square meters (p. 110, ROA; p. 13, rec.). These parcels of land later became the subject matter of the adverse claim filed by the claimant.

The case having been resolved and title having been issued to petitioner, adverse claimant waited for petitioner to comply with his obligation under the document executed by him on June 10, 1961 by delivering the one-half (½) portion of the said parcels of land.

Petitioner refused to comply with his obligation and instead offered to sell the whole parcels of land covered by TCT No. 31841 to petitioner-spouses Juan Larrazabal and Marta C. de Larrazabal. Upon being informed of the intention of the petitioner, adverse claimant immediately took steps to protect his interest by filing with the trial court a motion to annotate his attorney's lien on TCT No. 31841 on June 10, 1965 and by notifying the prospective buyers of his claim over the one-half portion of the parcels of land.

Realizing later that the motion to annotate attorney's lien was a wrong remedy, as it was not within the purview of Section 37, Rule 138 of the Revised Rules of Court, but before the same was denied by the trial court, adverse claimant filed an affidavit of adverse claim on July 19, 1965 with the Register of Deeds of Cebu (p. 14, ROA; p. 13, rec.). By virtue of the registration of said affidavit, the adverse claim for one-half (½) of the lots covered by the June 10, 1961 document was annotated on TCT No. 31841.

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Notwithstanding the annotation of the adverse claim, petitioner-spouses Maximo Abarquez and Anastacia Cabigas conveyed by deed of absolute sale on July 29, 1965 two thirds (2/3) of the lands covered by TCT No. 31841 to petitioner-spouses Juan Larrazabal and Marta C. de Larrazabal. When the new transfer certificate of title No. 32996 was issued, the annotation of adverse claim on TCT No. 31841 necessarily had to appear on the new transfer certificate of title. This adverse claim on TCT No. 32996 became the subject of cancellation proceedings filed by herein petitioner-spouses on March 7, 1966 with the Court of First Instance of Cebu (p. 2, ROA; p. 13, rec.). The adverse claimant, Atty. Alberto B. Fernandez, filed his opposition to the petition for cancellation on March 18, 1966 (p. 20, ROA; p. 13, rec.). The trial court resolved the issue on March 19, 1966, when it declared that:

"x x x the petition to cancel the adverse claim should be denied. The admission by the petitioners that the lawyers (Attys. Fernandez and Batiguin) are entitled to only one-third of the lot described in Transfer Certificate of Title No. 32966 is the best proof of the authority to maintain said adverse claim" (p. 57, ROA; p. 13 rec.).

Petitioner-spouses decided to appeal the order of dismissal to this Court and correspondingly filed the notice of appeal on April 1, 1966 with the trial court. On April 2, 1966, petitioner-spouses filed the appeal bond and subsequently filed the record on appeal on April 6, 1966. The records of the case were forwarded to this Court through the Land Registration Commission of Manila and were received by this Court on May 5, 1966.

Counsel for the petitioner-spouses filed the printed record on appeal on July 12, 1966. Required to file the appellants' brief, counsel filed one on August 29, 1966 while that of the appellee was filed on October 1, 1966 after having been granted an extension to file his brief.

The case was submitted for decision on December 1, 1966. Counsel for the petitioners filed a motion to expunge appellees' brief on December 8, 1966 for having been filed beyond the reglementary period, but the same was denied by this Court in a resolution dated February 13, 1967.

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The pivotal issue to be resolved in the instant case is the validity or nullity of the registration of the adverse claim of Atty. Fernandez, resolution of which in turn hinges on the question of whether or not the contract for a contingent fee, basis of the interest of Atty. Fernandez, is prohibited by the Article 1491 of the New Civil Code and Canon 13 of the Canons of Professional Ethics.

Petitioners contend that a contract for a contingent fee violates Article 1491 because it involves an assignment of a property subject of litigation. That article provides:

"Article 1491. The following persons cannot acquire by purchase even at a public or judicial auction, either in person or through the mediation of another:

"x x x x x x x x x

"(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; *this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession*" (emphasis supplied).

This contention is without merit. Article 1491 prohibits only the sale or assignment between the lawyer and his client, of property which is the subject of litigation. As WE have already stated: "The prohibition in said article applies only to a sale or assignment to the lawyer by his client of the property which is the subject of litigation. In other words, for the prohibition to operate, the sale or assignment of the property must take place *during the pendency* of the litigation involving the property" (*Rosario Vda. de Laig vs. Court of Appeals, et al.*, L-26882, November 21, 1978).

Likewise, under American Law, the prohibition does not apply to "cases where after completion of litigation the lawyer accepts on account of his fee, an interest in the assets realized by the

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litigation" (Drinker, Henry S., Legal Ethics, p. 100 [1953], citing App. A, 280; N.Y. City 714). "There is a clear distinction between such cases and one in which the lawyer speculates on the outcome of the matter in which he is employed" (Drinker, *supra*, p. 100 citing A.B.A. Op. 279).

A contract for a contingent fee is not covered by Article 1491 because the transfer or assignment of the property in litigation takes effect only after the finality of a favorable judgment. In the instant case, the attorney's fees of Atty. Fernandez, consisting of one-half (½) of whatever Maximo Abarquez might recover from his share in the lots in question, is contingent upon the success of the appeal. Hence, the payment of the attorney's fees, that is, the transfer or assignment of one-half (½) of the property in litigation will take place only if the appeal prospers. Therefore, the transfer actually takes effect after the finality of a favorable judgment rendered on appeal and not during the pendency of the litigation involving the property in question. Consequently, the contract for a contingent fee is not covered by Article 1491.

While Spanish civilists differ in their views on the above issue — whether or not a contingent fee contract (quota litis agreement) is covered by Article 1491 — with Manresa advancing that it is covered, thus:

"*Se ha discutido si en la incapacidad de los Procuradores y Abogados esta incluido el pacto de quota litis. Consiste este, como es sabido, en la estipulacion de que el Abogado o el Procurador han de hacer suyos una parte alicuota de la cosa que se litiga, si la sentencia es favorable. Con este concepto a la vista, es para nosortros indudable que el articulo que comentamos no menciona ese pacto; pero como la incapacidad de los Abogados y Procuradores se extiende al acto de adquirir por cesion; y la efectividad del pacto de quota litis implica necesariamente una cesion, estimamos que con solo el num. 5.° del articulo 1459 podria pedirse con exito la nulidad de ese pacto tradicionalmente considerado como ilicito.*

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"*Debe tenerse tambien en cuenta, respecto del ultimo parrafo del articulo 1459, la sentencia del Tribunal Supreme de 25 de Enero 1902, que delcara que si bien el procurador no puede adquirir para si los bienes, en cuanto a los cuales tiene incapacidad, puede adquirirlos para otra persona en quien no concurra incapacidad alguna" (Manresa, Comentarios al Codigo Civil Español, Tomo X*, p. 110 [4a ed., 1931] emphasis supplied).

Castan, maintaining that it is not covered, opines thus:

"C. *Prohibiciones impuestas a las personas encargadas, mas o menos directamente, de la administracion de justicia. — El mismo art 1.459 del Codigo civil prohibe a los Magistrados, Jueces, individuos del Ministerio fiscal, Secretarios de Tribunales y Juzgados y Oficiales de Justicia adquirir por compra (aunque sea en subasta publica o judicial, por si ni por persona alguna intermedia), 'los bienes y derechos que estuviesen en litigio ante el Tribunal en cuya jurisdiccion on territorio ejercieran sus respectivas funciones, extendiendo se esta prohibicion al acto de adquirir por cesion'; y siendo tambien extensiva 'a los Abogados y Procuradores respecto a los bienes y derechos que fueran objeto del un litigio en que intervengan por su profesion y oficio.*'

"*El fundamento de esta prohibicion es clarisimo. No solo se trata — dice Manresa — de quitar la ocasion al fraude; persiguese, ademas, el proposito de rodear a las personas que intervienen en la administracion de justicia de todos los prestigios que necesitan para ejercer su ministerio, librandolos de toda sospecha, que, aunque fuere infundada, redundaria en descredito de la institucion.*

"*Por no dar lugar a recelos de ninguna clase, admite el Codigo (en el apartado penutimo del art. 1.459) algunos casos en que, por excepcion, no se aplica el principio prohibitivo de que venimos hablando. Tales son los de que se trate de acciones hereditarias entre coherederos, de cesion en pago de creditos, o de garantia de los bienes que posean los funcionarios de justicia.*

> '*Algunos autores (Goyena, Manresa, Valverde) creen que en la prohibicion del art. 1.459 esta comprendido el pacto de quota litis (o sea el convenio por el cual se concede al Abogado o Procurador, para el caso de obtener sentencia favorable, una parte alicuota de la cosa o cantidad que se litiga), porque dicho pacto supone la venta o cesion de una*

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parte de la cosa o derecho que es objecto del litigio. Pero Mucius Scaevola observa, con razon, que en el repetido pacto no hay propiamente caso de compraventa ni de cesion de derechos, y bastan para estimario nulo otros preceptos del Codigo como los relativos a la ilicitud de la causa'" (Castan, Derecho Civil Español, Tomo 4, pp. 68-69, [9a ed., 1956], emphasis supplied).

The Supreme Court of Spain, in its *sentencia* of 12 November 1917, has ruled that Article 1459 of the Spanish Civil Code (Article 1491 of our Civil Code) does not apply to a contract for a contingent fee because it is not contrary to morals or to law, holding that:

"x x x *que no es susceptible de aplicarse el precepto contenido en el nun. 5° del art. 1.459 a un contrato en el que se restringen los honorarios de un Abogado a un tanto por ciento de lo que se obtuviera en el litigio, cosa no repudiada por la moral ni por la ley*" (Tolentino, Civil Code of the Philippines, p. 36, Vol. V [1959]; Castan, *supra*; Manresa, *supra*).

In the Philippines, among the Filipino commentators, only Justice Capistrano ventured to state his view on the said issue, thus:

"The incapacity to purchase or acquire by assignment, which the law also extends to lawyers with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession, also covers contracts for professional services *quota litis*. Such contracts, however, have been declared valid by the Supreme Court" (Capistrano, Civil Code of the Philippines, p. 44, Vol. IV [1951]).

Dr. Tolentino merely restated the views of Castan and Manresa as well as the state of jurisprudence in Spain, as follows:

"Attorneys-at-law — Some writers, like Goyena, Manresa and Valverde, believe that this article covers *quota litis* agreements, under which a lawyer is to be given an aliquot part of the property or amount in litigation if he should win the case for his client. *Scaevola and Castan, however, believe that such a contract does not involve a sale or assignment of rights, but it may be void under other articles*

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of the Code such as those referring to illicit cause. On the other hand, the Spanish Supreme Court has held that this article is not applicable to a contract which limits the fees of a lawyer to a certain percentage of what may be recovered in litigation, as this is not contrary to morals or to law." (Tolentino, Civil Code of the Philippines, p. 35, Vol. V [1959]; Castan, *supra*, emphasis supplied).

Petitioners further contend that a contract for a contingent fee violates the Canons of Professional Ethics. This is likewise without merit. This posture of petitioners overlooked Canon 13 of the Canons which expressly recognizes contingent fees by way of exception to Canon 10 upon which petitioners relied. For while Canon 10 prohibits a lawyer from purchasing "x x x any interest in the subject matter of the litigation which he is conducting," Canon 13, on the other hand, allows a reasonable contingent fee contract, thus: "A contract for a contingent fee where sanctioned by law, should be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation, but should always be subject to the supervision of a court, as to its reasonableness." As pointed out by an authority on Legal Ethics:

"Every lawyer is intensely interested in the successful outcome of his case, not only as affecting his reputation, but also his compensation. *Canon 13 specifically permits the lawyer to contract for a contingent fee which, of itself, negatives the thought that the Canons preclude the lawyer's having a stake in his litigation.* As pointed out by Professor Cheatham on page 170 n. of his Case Book, there is an inescapable conflict of interest between lawyer and client in the matter of fees. *Nor*, despite some statements to the contrary in Committee opinions, *is it believed that, particularly in view of Canon 13, Canon 10 precludes in every case an arrangement to make the lawyer's fee payable only out of the results of the litigation. The distinction is between buying an interest in the litigation as a speculation, which Canon 10 condemns, and agreeing, in a case which the lawyer undertakes primarily in his professional capacity, to accept his compensation contingent on the outcome*" (Drinker, Henry S., Legal Ethics, p. 99, [1953], emphasis supplied).

These Canons of Professional Ethics have already received "judicial recognition by being cited and applied by the Supreme

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Court of the Philippines in its opinion" (Malcolm, Legal and Judicial Ethics, p. 9 [1949]). And they have likewise been considered sources of Legal Ethics. More importantly, the American Bar Association, speaking through Chairman Howe of the Ethics Committee, opined that "The Canons of Professional Ethics are legislative expressions of professional opinion (A.B.A. Op. 37 [1912])" [See footnote 25, Drinker, Legal Ethics, p. 27]. Therefore, the Canons have some binding effect.

Likewise, it must be noted that this Court has already recognized this type of a contract as early as the case of *Ulanday vs. Manila Railroad Co.* (45 Phil. 540 [1923]), where WE held that "contingent fees are not prohibited in the Philippines, and since impliedly sanctioned by law 'should be under the supervision of the court in order that clients may be protected from unjust charges' (Canons of Professional Ethics)". The same doctrine was subsequently reiterated in *Grey vs. Insular Lumber Co.* (97 Phil. 833 [1955]) and *Recto vs. Harden* (100 Phil. 427 [1956]).

In the 1967 case of *Albano vs. Ramos* (20 SCRA 171 [1967]), the attorney was allowed to recover in a separate action her attorney's fees of one-third (1/3) of the lands and damages recovered as stipulated in the contingent fee contract. And this Court in the recent case of *Rosario Vda. de Laig vs. Court of Appeals, et al.* (*supra*), which involved a contingent fee of one-half (½) of the property in question, held that "contingent fees are recognized in this jurisdiction (Canon 13 of the Canons of Professional Ethics adopted by the Philippine Bar association in 1917 [Appendix B, Revised Rules of Court]), which contingent fees may be a portion of the property in litigation."

Contracts of this nature are permitted because they redound to the benefit of the poor client and the lawyer "especially in cases where the client has a meritorious cause of action, but no means with which to pay for legal services unless he can, with the sanction of law, make a contract for a contingent fee to be paid out of the proceeds of the litigation" (Francisco,

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Legal Ethics, p. 294 [1949], citing *Lipscomb vs. Adams,* 91 S.W. 1046, 1048 [1906]). Oftentimes, contingent fees are the only means by which the poor and helpless can seek redress for injuries sustained and have their rights vindicated. Thus:

"*The reason for allowing compensation for professional services based on contingent fees is that if a person could not secure counsel by a promise of large fees in case of success, to be derived from the subject matter of the suit, it would often place the poor in such a condition as to amount to a practical denial of justice.* It not infrequently happens that person are injured through the negligence or willful misconduct of others, but by reason of poverty are unable to employ counsel to assert their rights. In such event their only means of redress lies in gratuitous service, which is rarely given, or in their ability to find some one who will conduct the case for a contingent fee. *That relations of this kind are often abused by speculative attorneys or that suits of this character are turned into a sort of commercial traffic by the lawyer, does not destroy the beneficial result to one who is so poor to employ counsel*" (*id.*, at p. 293, citing Warvelle, Legal Ethics, p. 92, italics supplied).

Justice George Malcolm, writing on contingent fees, also stated that:

"x x x the system of contingent compensation has the merit of affording to certain classes of persons the opportunity to procure the prosecution of their claims which otherwise would be beyond their means. *In many cases in the United States and the Philippines, the contingent fee is socially necessary*" (Malcolm, Legal and Judicial Ethics, p. 55 [1949], italics supplied).

Stressing further the importance of contingent fees, Professor Max Radin of the University of California, said that:

"The contingent fee certainly increases the possibility that vexatious and unfounded suits will be brought. On the other hand, *it makes possible the enforcement of legitimate claims which otherwise would be abandoned because of the poverty of the claimants. Of these two possibilities, the social advantage seems clearly on the side of the contingent fee.* It may in fact be added by way of reply to the first objection that vexatious and unfounded suits have been brought by men who could and did pay substantial attorney's fees for that

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purpose" (Radin, *Contingent Fees in California*, 28 Cal. L. Rev. 587, 589 [1940], emphasis supplied).

Finally, a contingent fee contract is always subject to the supervision of the courts with respect to the stipulated amount may be reduced or nullified. So that in the event that there is any undue influence or fraud in the execution of the contract or that the fee is excessive, the client is not without remedy because the court will amply protect him. As held in the case of Grey vs. Insular Lumber Co., *supra*, citing the case of *Ulanday vs. Manila Railroad Co., supra*:

"Where it is shown that the contract for a contingent fee was obtained by any undue influence of the attorney over the client, or by any fraud or imposition, or that the compensation is so clearly excessive as to amount to extortion, the court will in a proper case protect the aggrieved party."

In the present case, there is no iota of proof to show that Atty. Fernandez had exerted any undue influence or had perpetrated fraud on, or had in any manner taken advantage of his client, Maximo Abarquez. And, the compensation of one-half of the lots in question is not excessive nor unconscionable considering the contingent nature of the attorney's fees.

With these considerations, WE find that the contract for a contingent fee in question is not violative of the Canons of Professional Ethics. Consequently, both under the provisions of Article 1491 and Canons 10 and 13 of the Canons of Professional Ethics, a contract for a contingent fee is valid.

In resolving now the issue of the validity or nullity for the registration of the adverse claim, Section 110 of the Land Registration Act (Act 496) should be considered. Under said section, an adverse claim may be registered only by:

"Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration . . . if no other provision is made in this Act for registering the same x x x."

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The contract for a contingent fee, being valid, vested in Atty. Fernandez an interest or right over the lots in question the extent of one-half thereof. Said interest became vested in Atty. Fernandez after the case was won on appeal because only then did the assignment of the one-half (½) portion of the lots in question became effective and binding. So that when he filed his affidavit of adverse claim his interest was already an existing one. There was therefore a valid interest in the lots to be registered in favor of Atty. Fernandez adverse to Maximo Abarquez.

Moreover, the interest or claim of Atty. Fernandez in the lots in question arose long after the original registration which took place many years ago. And, there is no other provision of the Land Registration Act under which the interest or claim may be registered except as an adverse claim under Section 110 thereof. The interest or claim cannot be registered as an attorney's charging lien. The lower court was correct in denying the motion to annotate the attorney's lien. 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. Said Section provides that:

"Section 37. An attorney shall have a lien upon the funds, documents and papers of his client which have lawfully come into his oppossession and may retain the same until his lawful fees and disbursements 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, for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client . . .*" (italics supplied).

Therefore, as an interest in registered land, the only adequate remedy open to Atty. Fernandez is to register such interest as an adverse claim. Consequently, there being a substantial compliance with Section 110 of Act 496, the registration of the adverse claim is held to be valid. Being valid, its registration should not be cancelled because as WE have already stated, "it is only when such claim is found unmeritorious that the

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registration thereof may be cancelled" (*Paz Ty Sin Tei vs. Jose Lee Dy Piao*, 103 Phil. 867 [1958]).

The one-half (½) interest of Atty. Fernandez in the lots in question should therefore be respected. Indeed, he has a better right than petitioner-spouses, Juan Larrazabal and Marta C. de Larrazabal. They purchased their two thirds (2/3) interest in the lots in question with the knowledge of the adverse claim of Atty. Fernandez. The adverse claim was annotated on the old transfer certificate of title and was later annotated on the new transfer certificate of title issued to them. As held by this Court:

"The annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property where the registration of such interest or right is not otherwise provided for by the Land Registration Act, and serves as a notice and warning to third parties dealing with said property that someone is claiming an interest on the same or a better right than the registered owner thereof" (*Sanchez, Jr. vs. Court of Appeals*, 69 SCRA 332 [1976]; *Paz Ty Sin Tei vs. Jose Lee Dy Piao, supra*].

Having purchased the property with the knowledge of the adverse claim, they are therefore in bad faith. Consequently, they are estopped from questioning the validity of the adverse claim.

WHEREFORE, THE DECISION OF THE LOWER COURT DENYING THE PETITION FOR THE CANCELLATION OF THE ADVERSE CLAIM SHOULD BE, AS IT IS HEREBY AFFIRMED, WITH COSTS AGAINST PETITIONER-APPELLANTS JUAN LARRAZABAL AND MARTA C. DE LARRAZABAL.

SO ORDERED.

Teehankee (Chairman), Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.