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ATTORNEY AND CLIENT: ATTORNEY'S CHARGING LIEN

Attorneys occupy a unique position in many respects. Their relationship with their clients is governed not only by many concepts of normal agency but in addition by their status as officers of the court. A number of special rules regulating the relationship of attorney and client have arisen which, lacking the benefit of precise analogy from other fields, are as difficult of application as they are unique. Among such are those methods by which the attorney is protected from financially irresponsible clients. One of these is the so-called charging lien, which, either because it is infrequently used or because no extensive litigation results from its use, has been little discussed by Florida courts. It is the purpose of this note to examine the scope of the remedy and the ramifications consequent upon its use.

At the outset it is advisable to differentiate between the retaining lien and the charging lien. Both are devices available to attorneys in obtaining security for payment of costs and for services rendered. The retaining lien was recognized at common law in England as early as 1799.[1] Most jurisdictions have recognized this lien, and in many states the extent of the claim has been defined by legislative action.[2] The retaining lien is a possessory lien and attaches to the client's papers, money, securities, and other property coming into the possession of the attorney in his professional capacity.[3] Since it is similar to other common law possessory liens, loss of possession of the property terminates the lien on it.[4] This type of lien secures not only the debt due for a specific service but all sums due from the client for any services rendered by the attorney.[5]

The charging lien, on the other hand, is only remotely akin to the more familiar artisan's lien, and, in the strict sense of the term, it is not a "lien." This is true because the one claiming the lien does not, and actually cannot, possess the item on which he claims his lien. A

[1]Welsh v. Hole, 1 Doug. 238, 99 Eng. Rep. 155 (K.B. 1779).

[2]See, *e.g.*, Roxana Petroleum Co. v. Rice, 109 Okla. 161, 235 Pac. 502 (1924).

[3]Collins v. Schneider, 187 Miss. 1, 192 So. 20 (1939); Prichard v. Fulmer, 22 N.M. 134, 159 Pac. 39 (1916); *In re* Sebring, 238 App. Div. 281, 264 N.Y. Supp. 379 (4th Dep't 1933).

[4]*In re* Sebring, *supra* note 3; *Appeal of* Harris, 323 Pa. 124, 186 Atl. 92 (1936); Quakertown & E.R.R. v. Guarantor's Liability Indemnity Co., 206 Pa. 350, 55 Atl. 1033 (1903).

[5]Norrell v. Chasan, 125 N.J. Eq. 230, 4 A.2d 88 (Ct. Err. & App. 1939); *In re* Sebring, *supra* note 3; *In re* Hollins, 197 N.Y. 361, 90 N.E. 997 (1910).

charging lien is merely the right of an attorney to obtain a charge upon a judgment secured by him for his client. The inchoate nature of the lien is recognized by courts, who refer to it as being somewhat in the nature of an equitable assignment of a security interest in money due the attorney's client, by virtue of a judgment or other court order for the payment of money or return of property.[6] It may also be an equitable interest in property which is the subject-matter of the suit but which has not been reduced to possession by the attorney. A second element distinguishing a charging lien from a retaining lien is that the lien is limited to costs, disbursements, and services in connection with the litigation from which the judgment, decree, or award has been obtained. It is in effect the attorney's right to enforce in equity a common law lien upon a judgment or property the subject of the judgment, for his own benefit and to the extent of his claim.

Since law courts recognize only liens reduced to possession, it is probable that the charging lien originated at chancery. Certainly it is not ancient. It is said that one of the earliest recognitions of the right of an attorney to the intervention of a court in impressing upon the judgment a lien for services rendered was afforded by Lord Mansfield in 1779.[7] Whatever its origin, however, the charging lien is now generally recognized in the United States.[8] In some jurisdictions its existence was first recognized by the courts;[9] in certain states it did not exist until brought into existence by the legislature;[10] and in still a third category of jurisdictions the nature of the lien, originally recognized by the courts, was modified by statute.[11] The courts of Florida have long recognized the right of an attorney to such a lien in equity in the course of the common law.[12]

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[6]United States v. Hudson, 39 F. Supp. 797 (D. Mont. 1941); Epp v. Hinton, 102 Kan. 485, 170 Pac. 987 (1918); Peetsch v. Quinn, 6 Misc. 52, 26 N.Y. Supp. 729 (N.Y. City Ct. 1893).

[7]Welsh v. Hole, 1 Doug. 238, 99 Eng. Rep. 155 (K.B. 1779).

[8]2 MECHEM, AGENCY §2276 (2d ed. 1914); see Note, 26 IOWA L. REV. 840, 844 n.25, 845 n.26-28 (1941), for a collection of state statutes on the charging lien.

[9]Webster v. Sweat, 65 F.2d 109 (5th Cir. 1933); Visconti v. M. E. M. Machinery Corp., 7 N.J. Super. 271, 73 A.2d 74 (1950); Norrell v. Chasan, 125 N.J. Eq. 230, 4 A.2d 88 (Ct. Err. & App. 1939).

[10]Cazalet v. Cazalet, 322 Ill. App. 105, 54 N.E.2d 61 (1944); Card v. George, 140 Neb. 426, 299 N.W. 487 (1941).

[11]1 JONES, LIENS §158 (3d ed. 1914).

[12]Carter v. Davis, 8 Fla. 183 (1858); Randall v. Archer, 5 Fla. 438 (1854).

Scope

One fundamental requisite to the existence of a charging lien is that there be a valid contract for fees, either express or implied, entered into between the attorney and his client.[13] The attorney may agree to accept a percentage of a monetary recovery for his fee;[14] he may agree to be paid out of property obtained in a suit to recover it;[15] or there may be no agreement as to the amount of the fee or its source.[16] In all these situations, so long as the attorney and client are in agreement that the attorney shall proceed with the suit and will be paid for his services, a charging lien attaches to the judgment.

The underlying rationale warranting the imposition of the lien is that the client has received a benefit through the specialized labor and at the expense of the attorney. This concept assists in defining the extent of the remedy. Thus, in the absence of any agreement that would prohibit such a holding, the lien may cover all legitimate expenditures incurred in pursuing the claim, as well as fees.[17] When there is no agreement as to the fee, the court may determine a reasonable fee in a summary proceeding.[18] By defining the benefit in terms of labor expended, the lien is confined to securing costs and compensation due for services in the particular litigation wherein the services have been rendered.[19] It may include services in all proceedings leading to the final judgment, however, and to services incidental to the main cause, whether in the same court or not. At least one court has been unwilling to extend the lien in aid of recovery of his fees from the client by counsel employed in a consulting capacity by the principal attorney.[20] On the other hand, the lien is available, when judgment is finally entered, to attorneys dismissed by the client without cause in the course of the litigation.[21] In such cases both the original attorney and the subsequent attorney possess liens. No cases have been found in which there was a determination of priority in the

[13]Norrell v. Chasan, 125 N.J. Eq. 230, 4 A.2d 88 (Ct. Err. & App. 1939).

[14]Miller v. Scobie, 152 Fla. 328, 11 So.2d 892 (1943).

[15]Scott v. Kirtley, 113 Fla. 637, 152 So. 721 (1933).

[16]*Ibid.*

[17]Renick v. Ludington, 16 W. Va. 378 (1880); Byram v. Miner, 47 F.2d 112 (8th Cir. 1931) (by statute).

[18]*In re* Knapp, 85 N.Y. 285 (1881).

[19]*In re* Heinsheimer, 214 N.Y. 361, 108 N.E. 636 (1915); Leask v. Hoagland, 64 Misc. 156, 118 N.Y. Supp. 1035 (Sup. Ct. 1909).

[20]Gibson v. Chicago, M. & St. P. Ry., 122 Iowa 565, 98 N.W. 474 (1904).

[21]Cohen v. Kirckheimer Bros. Co., 285 Ill. App. 583, 2 N.E.2d 592 (1936).

event proceeds of the judgment were inadequate to satisfy the total lien. The lien is available to the first attorney for reasonable compensation for only those services rendered up to the time his employment was terminated.

Disagreement exists among courts as to whether the lien attaches to particular funds or kinds of property. An express agreement between an attorney and his client that the attorney will have a lien on the property, personal or real, that he recovers for his client will be enforced if otherwise valid.[22] In the absence of such agreement or statute some jurisdictions have held that an attorney has no lien on personal property recovered for his client.[23] Others have altered this by statute. A Florida case denied an attorney for a legatee under a nuncupative will an injunction against disposing of cattle upon which he claimed a lien for his services in establishing the will.[24] The Court reasoned that the legatee had no direct interest to which a lien could attach, the legal title to the property having vested upon establishment of the will in the personal representative of the decedent and not in the legatee. Had the legatee taken legal title to the property and had the attorney attempted to enforce his charging lien against that property, a different problem would have been presented and, it is submitted, the court would have permitted a lien to attach.

Florida, along with a minority of jurisdictions, has held, even in the absence of an authorizing statute or contract, that the attorney has a lien for his services on realty recovered for his client.[25] In *Scott v. Kirtley*[26] an attorney was employed by a widow for the purpose of procuring for her a child's share in an estate, with the understanding that he would of necessity have to be paid for his services out of the property obtained for her. The Court allowed him an equitable lien on the real property recovered for reasonable compensation for his services, even without express agreement as to the amount of compensation or as to the existence of a lien.

In the absence of a statute to the contrary, the general rule is that a lien does not attach to alimony or to an allowance for support and

[22]Fuller v. Cason, 26 Fla. 476, 7 So. 870 (1890); Kilbourne v. Wiley, 124 Mich. 370, 83 N.W. 99 (1900).

[23]Carroll v. Draughon, 154 Ala. 430, 45 So. 919 (1908); People *ex rel.* Stephens v. Holten, 304 Ill. 394, 136 N.E. 738 (1922). *Contra:* Grant v. Lookout Mt. Co., 93 Tenn. 691, 28 S.W. 90 (1894).

[24]Fuller v. Cason, 26 Fla. 476, 7 So. 870 (1890).

[25]Scott v. Kirtley, 113 Fla. 637, 152 So. 721 (1933); Alyea v. Hampton, 112 Fla. 61, 150 So. 242 (1933).

[26]*Supra* note 25.

maintenance.[27] The Florida Workmen's Compensation Act provides a method of paying fees, and thus negates the possibility that a lien would be permitted against benefits payable to an injured employee.[28] With or without statutorily prescribed immunity, funds recovered from government agencies are normally not subject to a charging lien.[29]

Priority

As a general rule the attorney's charging lien is superior to all rights acquired after attachment of the lien, and also to any right of parties to the suit,[30] regardless of relative times of origin. Some courts say that the lien is not subject to a right of set-off in the adverse party against the attorney's client.[31] The theory motivating this evidently is that, in the absence of statute, the right to set off is a matter of equitable discretion and is not permitted when it will defeat rights of a third party. Some of the statutes establishing charging liens, however, permit set-off.[32] Frequently the reasoning behind holdings under such statutes is that the lien attaches to "money due" and not to the judgment. "Money due" is then further interpreted to mean money due after all set-offs are permitted.[33] These holdings appear to defeat the purpose of the lien, however.

In accordance with the general rule at common law, the charging lien has been held superior to the claim of a creditor who has executed on the client's judgment,[34] to a subsequent garnishment, attachment, or trustee process,[35] to a subsequently employed attorney who enforces the decree procured by the original attorney,[36] and to the rights of an assignee of the judgment, even though the latter took without express knowledge of the lien.[37] Florida has held that the client

[27]Canney v. Canney, 131 Mich. 363, 91 N.W. 620 (1902).

[28]FLA. STAT. §440.34 (1949).

[29]*In re* Albrecht, 253 N.Y. 537, 171 N.E. 772 (1930).

[30]Myers v. Miller, 134 Neb. 824, 279 N.W. 778 (1938).

[31]*But see* Adams v. Alabama Lime & Stone Corp., 221 Ala. 10, 16, 127 So. 544, 550 (1930) (holding attorney's lien on judgment under statute subject to all set-offs held by judgment debtor at time of judgment rendition).

[32]See Notes, 51 A.L.R. 1268 (1927), 34 A.L.R. 323 (1925).

[33]See Note, 26 IOWA L. REV. 840, 848, 849 (1941).

[34]Barnes v. Verry, 154 Minn. 252, 191 N.W. 589 (1923); Henry v. Traynor, 44 N.W. 11, 42 Minn. 234 (1889).

[35]*Accord,* Harlan & Co. v. Bennett, Robbins & Thomas, 127 Ky. 572, 106 S.W. 287 (1907).

[36]Brown v. Erwin, 89 W. Va. 113, 108 S.E. 605 (1921).

[37]Renick v. Ludington, 16 W. Va. 378 (1880).

may not escape the lien by encumbering or attempting to encumber the property to which the lien attaches.[38]

A more difficult question is presented in the event of bankruptcy of the judgment creditor. No equities appear that would warrant treating the lien differently from any other lien under the bankruptcy laws. It is honored if the bankruptcy occurs subsequent to attachment of the lien;[39] and one can logically argue that, since the trustee stands in the shoes of the debtor or of the original judgment creditor, he must take subject to the lien even when the bankruptcy occurs prior to judgment. Such an argument might be valid in common law assignments for the benefit of creditors, but would be regulated by the bankruptcy laws in statutory bankruptcies.

In connection with priorities, the time at which the lien attaches becomes important. Some states, in interpreting statutes, have stated that it attaches to the cause of action;[40] others hold that the lien relates back to and takes effect from the time of commencement of the services.[41] Florida adopts the majority view that the lien is on the judgment[42] and therefore does not attach until entry of the judgment. It is interesting to note that writers on this subject take the position that the attorney's lien must bow to the claims of the sovereign and that accordingly a lien for taxes is superior to a charging lien.

Creation, Enforcement, Termination

The performance of services by an attorney and a resulting judgment automatically bring the charging lien into existence at common law. Discharge by payment of money directly to the judgment creditor, transfer of property that was the subject of the litigation, or assignment of the judgment by the judgment creditor all raise questions of enforcement that are frequently discussed in terms of whether the lien was properly created. Viewed in the context of these transactions, the problem of whether the lien has been properly created becomes largely one of whether the lien takes precedence over the claims of innocent third parties. This in turn resolves itself into a

[38]Scott v. Kirtley, 113 Fla. 637, 152 So. 721 (1933).

[39]Cooke v. Thresher, 51 Conn. 105 (1883); Blumenthal v. Anderson, 91 N.Y. 171 (1883).

[40]*In re* Heinsheimer, 159 App. Div. 33, 143 N.Y. Supp. 895 (1st Dep't 1913).

[41]Harlan & Co. v. Bennett, Robbins & Thomas, 127 Ky. 572, 106 S.W. 287 (1907).

[42]Miller v. Scobie, 152 Fla. 328, 11 So.2d 892 (1943).

consideration of whether adequate notice of lien has been given by the attorney. Some jurisdictions statutorily require that the lien be entered in the judgment or in the docket opposite the entry of the judgment, or that notice be given in writing to the adverse party or his attorney.[43] If this is done the judgment debtor remains liable for the lien even though he pays the full amount of the judgment to the judgment creditor.[44] In jurisdictions without statutory regulations concerning the lien, a course of decision cannot be traced otherwise than in terms of the equities involved. Innocent purchasers for value of property that comes into the client-vendor's hands subject to an unpublicized intent to enforce the lien generally take free of the lien.[45] On the other hand, no notice is required as between attorney and client, and purchasers or assignees of the judgment take subject to the lien irrespective of whether they have had notice of its existence.[46] If the judgment debtor has such notice and nevertheless pays the judgment, he remains liable for the satisfaction of the lien and the attorney may proceed against him.[47]

The non-possessory nature of the charging lien has resulted in a variety of opinions as to methods of enforcing it. Some jurisdictions speak of the right of the attorney to "sue the judgment,"[48] while others by different language permit the attorney to enforce the judgment in his own name,[49] or in the name of his client,[50] provided he has the client's consent.[51] Florida follows the majority of jurisdictions in regarding the lien as equitable in nature and therefore one to be protected in equity.[52] For this purpose the attorney is regarded as being similar in some respects to an equitable assignee;[53] and he may

[43]IOWA CODE §610.18 (1946); Cherry v. Erwin & Erwin, 173 Okla. 511, 49 P.2d 788 (1935).

[44]IOWA CODE §610.18 (1946).

[45]Hanger v. Fowler, 20 Ark. 667 (1859); Humphrey v. Browning, 46 Ill. 476 (1868). The idea of secret liens on property is repugnant to the theory of recording claims.

[46]Renick v. Ludington, 16 W. Va. 378 (1880).

[47]Shanklin v. Manville, 105 Kan. 457, 184 Pac. 983 (1919).

[48]Stratton v. Hussey, 62 Me. 286 (1874); Woods v. Verry, 4 Gray 357 (Mass. 1855).

[49]Walcutt v. Huling, 5 Ohio App. 326, 112 N.E. 1087 (1913).

[50]Woods v. Verry, 4 Gray 357 (Mass. 1855).

[51]Horton v. Champlin, 12 R.I. 550, 34 Am. Rep. 722 (1880).

[52]Feal v. Rodriguez, 44 So.2d 679 (Fla. 1950); Knabb v. Mabry, 137 Fla. 530, 188 So. 586 (1939); Winter v. Thomas, 34 App. D.C. 80 (1909).

[53]United States v. Hudson, 39 F. Supp. 797 (D. Mont. 1941); Adams v. Alabama Lime & Stone Corp., 221 Ala. 10, 127 So. 544 (1930); Epp v. Hinton,

bring a bill in equity alleging the services, the judgment, the agreement if any, and the fact that no payments have been received by him from the client. The Florida Supreme Court has expressly sanctioned this procedure,[54] but two previous cases, both in equity, impliedly sanction the use of a simple petition to the court in the suit giving rise to the lien.[55] The fact that the sum due for services has not been fixed will not defeat the bill.[56]

A notable and worthy exception to this general rule occurred recently when the Florida Supreme Court, upon petition, permitted the probate court to adjudicate the lien of an attorney for services rendered an estate against a distributee's interest.[57] This decision adds to the possible methods of obtaining relief on the lien in probate cases.

Satisfaction of the attorney's claims will of course discharge the lien. It may also be waived, either expressly or by acts indicating an intention to abandon.[58] Waiver may be found, according to some jurisdictions, upon an action on the contract for compensation brought by the attorney against his client.[59] This ruling is apparently based upon the theory of election of remedies. Some jurisdictions permit action on the lien after the statute of limitations has barred an action on the contract.[60] In the recent Florida case of *Nichols v. Kroelinger*[61] an attorney had secured a judgment for his client which included attorney's fees. This judgment lay dormant until five years after the death of his client; at which time, the estate never having been administered, the attorney attempted to have an administrator appointed to collect his fees. The Court said that any relief the attorney may have had against the estate of his deceased client was barred by the statute of limitations. The attorney, therefore, could not secure appointment of an administrator of the client's estate

102 Kan. 435, 170 Pac. 987 (1918).

[54]Nichols v. Kroelinger, 46 So.2d 722 (Fla. 1950); Feal v. Rodriguez, 44 So.2d 679 (Fla. 1950).

[55]Knabb v. Mabry, 137 Fla. 530, 188 So. 586 (1939); Randall v. Archer, 5 Fla. 438 (1854).

[56]Scott v. Kirtley, 113 Fla. 637, 152 So. 721 (1933).

[57]*In re* Warner's Estate, 160 Fla. 460, 35 So.2d 296 (1948); see 1 U. OF FLA. L. REV. 445 (1948).

[58]Prichard v. Fulmer, 22 N.M. 134, 159 Pac. 39 (1916).

[59]Wipfler v. Warren, 163 Mich. 189, 128 N.W. 178 (1910); Jones v. Dickerman, 95 Mich. 289, 54 N.W. 876 (1893); Beech v. Town of Canaan, 14 Vt. 485 (1842).

[60]Nichols v. Kroelinger, 46 So.2d 722 (Fla. 1950); Jenkins v. Stephens, 60 Ga. 216 (1878).

[61]*Supra* note 60.

against the consent of the client's widow; his remedy was to move against the judgment to satisfy his charging lien. The Court thus refused to allow the claim of the attorney against a deceased client's estate after the three-year statutory period[62] from the death of the client had run, but sanctioned survival of the charging lien beyond the statutory period. At the same time, it discussed the necessity of diligence; and it may well be that in some situations failure to move promptly to enforce the lien will be construed either as laches or as a waiver of it.

A voluntary withdrawal of an attorney from a case for good and sufficient reason is a waiver of his lien, but he does not thereby lose his right of action on his contract for the reasonable value of services rendered to the time of withdrawal.[63] Death of the attorney at any time during or after the proceedings does not constitute a waiver;[64] but acceptance of independent security for payment of his compensation may produce this result.[65]

Assignment of the lien does not extinguish it,[66] and is treated in the same manner as an assignment of any other chose in action recognized by equity. The assigning attorney obviously loses his right to the lien, which is then enforceable by the assignee. The lien is not extinguished by assignment of the judgment by the client to an innocent third person, even though for good consideration.[67] Assignment of the judgment to the attorney, however, merges the judgment and the lien, and thus destroys the lien as a separate entity.[68]

No aspect of the charging lien is apparently more confused than that arising when the client secretly settles his cause of action with the adverse party. Some of this confusion can be dissipated by an analysis of the time of settlement in relation to the judgment. If the settlement occurs after judgment and without knowledge of the plaintiff's attorney, the judgment debtor has been held liable for the satisfaction of the lien.[69] The same result is reached when, without

[62]FLA. STAT. §734.29 (1949).

[63]Morgan v. Roberts, 38 Ill. 65 (1865); Eisenberg v. Brand, 144 Misc. 878, 259 N.Y. Supp. 57 (Sup. Ct. 1932).

[64]Sargent v. McLeod, 209 N.Y. 360, 103 N.E. 164 (1913).

[65]Orwig v. Dixon, 121 Okla. 36, 247 Pac. 47 (1926).

[66]Day v. Bowman, 109 Ind. 383, 10 N.E. 126 (1886); Leask v. Hoagland, 64 Misc. 156, 118 N.Y. Supp. 1035 (Sup. Ct. 1909).

[67]Bent v. Lipscomb, 45 W. Va. 183, 31 S.E. 907 (1898).

[68]Dodd v. Brott, 1 Minn. 270 (1856).

[69]Midland Valley R.R. v. Johnson, 140 Ark. 174, 215 S.W. 665 (1919); Larned

notice to the attorney for the judgment creditor, a judgment is compromised pending appeal.[70] Similarly, a plaintiff who has obtained judgment may not consent to setting it aside without preserving the right of the attorney to that portion representing fair compensation.[71] In the event of a compromise settlement after judgment without the consent of the attorney, and when the fee is contingent and based on a percentage of the total money to be recovered, his lien, according to some jurisdictions, is measured by the judgment awarded and not by the amount of the settlement.[72]

More diversity in the holdings occurs when the parties secretly settle out of court before judgment but after suit has been instituted. At common law no question could arise because the lien attaches to a court order or judgment only. In those jurisdictions providing by statute that the lien attaches to the cause of action, the attorney retains a right of action against the adverse party for the value of his services.[73] Even those courts that regard the lien as a charge against the judgment sometimes permit the equities to effect a mutation of theory sufficient to enable recovery if, prior to judgment, there is a collusive settlement designed to prevent the collection of fees.[74] The strong reluctance of the bench to permit the attorney to proceed without the consent of his client has been overcome in several such cases. The attorney may petition for permission to proceed with the suit, and then pursue the case to judgment for his costs and fees, notwithstanding the settlement.[75] Generally, however, if the lien is a charge upon the judgment the existence of a judgment is of course a prerequisite to the existence of the lien. The Florida Supreme Court evidently adheres to the view that the lien and judgment spring into existence simultaneously; in *Miller v. Scobie*,[76] in permitting an attorney to continue a suit after settlement by the client prior to judgment, it said that ". . . when a litigant contracts with an attorney to litigate a cause and pay him a percentage of the recovery for his fee, he is entitled to a lien on the judgment therefor." The

v. Dubuque, 86 Iowa 166, 53 N.W. 105 (1892).

[70]Griggs v. Chicago, R.I. & P. Ry., 104 Neb. 301, 177 N.W. 185 (1920).

[71]Shultz v. Jones, 223 Mo. App. 142, 9 S.W.2d 248 (1928).

[72]Alabama Produce Co. v. Smith, 227 Ala. 330, 150 So. 148 (1933).

[73]1 JONES, LIENS §§186, 189 (3d ed. 1914).

[74]Miller v. Scobie, 152 Fla. 328, 11 So.2d 892 (1943).

[75]Holbert v. Allred, 24 Ga. App. 727, 102 S.E. 192 (1920); Miner v. Chicago, B. & Q.R.R., 147 Minn. 21, 179 N.W. 483 (1920).

[76]152 Fla. 328, 331, 11 So.2d 892, 894 (1943).

Court, by speaking of the lien as "a lien on the judgment," is in effect saying that no lien can arise until there is a judgment. Nevertheless it added that although litigants may ". . . settle controversies out of court, any such settlement without the knowledge of or notice to counsel and the payment of their fees is a fraud on them whether there is an intent to do so or not . . . ."[77] It logically follows that in the absence of fraud in the settlement the attorney should not be permitted to continue the suit to judgment, as there is nothing to which a lien can attach.

Conclusion

Consideration of precise limitations upon the possible use of the attorney's charging lien is precluded by the lack of decided cases on the subject. Extension of discussion beyond that contained above would enter the realm of hypothecation and speculation. Nevertheless it is obvious that the attorney's charging lien can be a powerful weapon to protect legitimate claims of attorneys for their expenses and labor. It is an equitable remedy to charge a judgment for costs and fees incurred in connection with obtaining such judgment. In the hierachy of claims it occupies a preferred position. Because of the confidential relationship between attorney and client and because of the high esteem in which lawyers are held in the community, however, it should be used with discretion. When it is employed properly and ethically the courts generally have endeavored to enforce it in such a manner as will prevent the financially irresponsible client from enjoying the fruits of the judgment without first satisfying the just claims of his attorney, through whose efforts he has obtained these fruits.

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[77] *Id.* at 332, 11 So.2d at 894.