

3. On February 7, 2007, Mr. Graves filed an attorney's lien on the property pursuant to Section 54.1-3932 of the Code of Virginia. On February 17, 2007, Mr. Olson signed the property over to Mrs. Olson by quitclaim deed. The quitclaim deed was recorded on March 29, 2007 as Instrument No. 200703290038165.

For several reasons, this Court finds that the Demurrer should be sustained.

First, the lien was not properly perfected in time. As a rule, to ensure that any settlements would be void against the lien, the Plaintiff had to give notice to the opposing party before the settlement. Va. Code § 54.1-3932(A) gives an attorney the right to a lien for attorney fees in a cause of action for divorce,¹ and grants the attorney a right to protect the lien by written notice. Va. Code Ann. § 54.1-3932(A) (1950) (as amended). The statute specifically provides that when an attorney-client contract "is made, and written notice of the claim of such lien is given to the opposite party, his attorney or agent, any settlement or adjustment of the cause of action shall be void against the lien so created, except as proof of liability on such cause of action." Id.; see also Fary v. Aquino, 218 Va. 889, 891 (1978) (lien was perfected upon notice to opposing party so that former client's subsequent assignment of its rights to another party did not defeat the lien); Military Circle Pet Ctr. # 94 v. Docktor Pet Holdings (In re Military Circle Pet Ctr. # 94), 181 B.R. 282, 288 (Bankr. D. Va. 1994) (holding that attorney's lien on promissory note was not perfected because notice was not given to the opposing party and thus the lien had no priority over any other claim).

¹ The statute states: "Any person having ... a cause of action for annulment or divorce, may contract with any attorney to prosecute the same, and the attorney shall have a lien upon the cause of action as security for his fees for any services rendered in relation to the cause of action or claim." Va. Code Ann. § 54.1-3932(A) (1950) (as amended).

Under the plain language of § 54.1-3932(A), a lien was created upon Mr. Olson's cause of action when Mr. Olson entered into a contract with the Plaintiff to pursue a divorce. However, the parties reached a settlement agreement in 2006, several months prior to the date when the Plaintiff provided written notice of the claim of the lien to Mrs. Olson. Because written notice of the lien was not given prior to the property settlement agreement, the lien was not yet perfected and can not void the settlement.

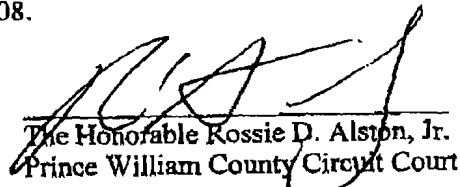
Second, enforcement of the lien against the property awarded to Mrs. Olson would frustrate the Final Decree of Divorce entered by this Court and the private contract negotiated by the parties. See Gloucester Realty Corp. v. Guthrie, 182 Va. 869, 875 (1944) ("The general rule is that no statute, however positive in its terms, is to be construed as designed to interfere with existing contracts, rights of action, or suits, and especially vested rights, unless the intention that it shall so operate is expressly declared."); Jones v. Jones, 19 Va. App. 265, 268-69 (1994) ("Where [a separation] agreement is plain and unambiguous in its terms, the rights of the parties are to be determined from the terms of the agreement and the court may not impose an obligation not found in the agreement itself").

Third, this Court observes that the parties negotiated the property settlement agreement in good faith. Mr. and Mrs. Olson were both represented by counsel when the parties agreed to transfer the property to Mrs. Olson. See Stevens v. Sparks, 205 Va. 128, 133 (1964) (superseded on other grounds) ("An attorney may have a common law possessory lien which is his right to retain the property or money belonging to his client until his fees are paid. Such a lien depends upon possession and if he voluntarily parts with possession the lien ceases."). There is no evidence that the agreement was negotiated in bad faith to defraud the Plaintiff of his fee. Compare Walton & Adams, P.C. v. D & H Distrib. Co., 33 Va. Cir. 98, 99 (Fairfax County


1993) (holding defendant was not liable for plaintiff's attorney fees because defendant negotiated settlement in good faith), with Katopodis v. Liberian S/T Olympic Sun, 282 F. Supp. 369, 372 (D. Va. 1968) (holding attorney was entitled to attorney fees because the parties reached a settlement without the knowledge or consent of counsel in a bad faith effort to deprive the attorney from collecting his fee).

In conclusion, and in light of the arguments of counsel, the record in this matter, and the law, it is hereby ORDERED that the Defendant's Demurrer is SUSTAINED.


ENTERED this 15th day of February, 2008.


The Honorable Kossie D. Alston, Jr.
Prince William County Circuit Court

SEEN AND objected to: for the reasons stated in Plaintiff's filed memorandum and argument presented at hearing


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