

ZOSIMO D. UY, PLAINTIFF AND APPELLANT, VS. JOSE R. ZAMORA, DEFENDANT; THE ALLIED FINANCE, INC., INTERVENOR AND APPELLEE.*G. R. No. L-19482. March 31, 1965*

Ponente: REGALA, J.

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This is an appeal from the Court of First Instance of Manila. It originated from a complaint filed in the Municipal Court of Manila by Zosimo D. Uy against Jose R. Zamora for the recovery of a sum of money.

It appears that, at the instance of plaintiff Uy, the Municipal Court ordered the attachment of a motor vehicle belonging to defendant Zamora. The writ of attachment was levied on the vehicle on August 11, 1960. Subsequently, the Municipal Court rendered judgment for the plaintiff Uy and ordered defendant Zamora to pay the sum of P1,740, plus interest at the rate of 12 per cent per annum, attorney's fees in the amount of P435 and the costs of the suit. From this judgment, the defendant Zamora appealed to the Court of First Instance of Manila.

While the case was thus pending appeal, the Allied Finance, Inc. sought and was allowed to intervene. According to the intervenor, the motor vehicle, which was attached by the sheriff, had previously been mortgaged to it by defendant Zamora to secure the payment of a loan of P3,060 and that at the time of the filing of the complaint in intervention on December 19, 1960 there remained a balance of P2,451.93 in its favor. Intervenor therefore prayed that defendant Zamora be ordered to pay P2,451.93 as principal, P250 as attorney's fees and the cost.

Meanwhile, on January 12, 1961, plaintiff Uy and defendant Zamora, who had earlier been declared in default, submitted to the court a compromise agreement wherein Zamora admitted being indebted to Uy in the sum of P1,740 plus P760, representing sheriff, guard and attorney's fees, bond premiums and expenses of litigation or in the total sum of P2,500. Since the motor vehicle had already been sold on order of the Court for P2,500 to prevent depreciation, defendant Zamora agreed to have Plaintiff Uy's credit paid out of the proceeds of the sale.

The court found defendant Zamora to be liable to plaintiff Uy in the amount of P2,500, and to the intervenor in the amount of P2,451.93, plus interest at 12 per cent per annum and attorney's fees for P200. But since there was not enough money with which to pay both claims, the question was: Which of the two credits is preferred?

Plaintiff Uy claims preference on the basis of a lien arising from the attachment of the motor vehicle on August 11, 1960. On the other hand, the intervenor bases its claim to preference on a Deed of Chattel Mortgage covering the same motor vehicle. This deed was executed on January 14, 1960 and acknowledged before a notary Public on June 20, 1960. As the lower court noted, it is not shown whether the mortgage was recorded in the Chattel Mortgage Register and noted in the records of the Motor Vehicles Office, although both plaintiff Uy and the intervenor affirm in their briefs that the mortgage was registered on August 24, 1960.

In resolving the issue, the lower court held that intervenor's claim could not be considered a specially preferred credit under Article 2241 (4) of the Civil Code because an unregistered chattel mortgage is void. However, the

court held that the same could be considered a credit appearing in a public instrument under Article 2244 (14) so that it could be considered preferred over plaintiff's attachment lien because of priority of its date.

Plaintiff moved for a reconsideration but the same was denied. Hence this appeal, plaintiff contending that—

1. The intervenor's chattel mortgage is void for lack of registration, citing Article 2140 of the Civil Code;
2. Since it was void, it could not affect plaintiff's attachment lien;
3. The intervenor's credit could not be considered a credit appearing in a public instrument under Article 2244 (14) because the credit was not yet due at the time of the levy of attachment;
4. Even if it is considered a credit in a public instrument, still plaintiff's lien by attachment is superior to the intervenor's credit because plaintiff's lien is specially preferred.

Considering the fact that the intervenor Allied Finance, Inc. registered its mortgage only on August 24, 1960, or subsequent to the date of the writ of attachment obtained by plaintiff Uy on August 11, 1960, the credit of the intervenor cannot prevail over that of the plaintiff.

The lower court upheld intervenor's credit on the ground that, being embodied in a public instrument of an earlier date (June 20, 1960), it should take precedence over plaintiff's lien by attachment (August 11, 1960), pursuant to Article 2244 of the Civil Code. This is untenable for the reason that, as already stated, the credit of the intervenor cannot be considered as preferred until the same has been recorded in the Motor Vehicles Office. Thus, in *Borlough vs. Fortune Enterprises, Inc.*, 53 O.G. 4070, it was held that a mortgage of motor vehicles, in order to affect third persons, should not only be registered in the Chattel Mortgage Registry, but the same should also be Recorded in the Motor Vehicles Office (now the Land Transportation Commission), as required in Section 5(e) of the then Revised Motor Vehicles Law. There is no doubt that with respect to defendant Zamora and the intervenor Allied finance, Inc., plaintiff Uy is a third person. We therefore hold that plaintiff's credit should first be paid.

WHEREFORE, the decision of the lower court is reversed, without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Makalintal, Bengzon J.P. and Zaldivar, JJ., concur.

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