

**RIZAL SURETY & INSURANCE CO., PLAINTIFF AND APPELLEE,
VS. MARCIANO DE LA PAZ, ET AL., DEFENDANTS, APPELLANTS AND
APPELLEES. MARCIANO DE LA PAZ AND DOMINGO LEONOR,
DEFENDANTS AND...**

G.R. No. L-6463. May 26, 1954

Ponente: PARAS, C.J.

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PARAS, C.J.:

On March 22, 1950, the plaintiff Rizal Surety and Insurance Company filed a complaint in the Court of First Instance of Manila, alleging that the sum of P20,000 was due and payable to the Federal Films, Inc., as proceeds of fire insurance covering a theater situated in Marikina, Rizal, which was destroyed by fire on February 1, 1947; that as several creditors of the insured, namely, Marciano de la Paz, Domingo Leonor, Jose Santos and Dominador Nepomuceno, Pablo Roman, Serapion D. Yñigo, and the Collector of Internal Revenue, were claiming said proceeds from the plaintiff, the latter had no means of knowing definitely the order of preference among the various claimants; and praying that said creditors, named defendants in the complaint, be ordered to interplead and litigate their conflicting claims, and that the sum of P20,000 be ordered paid to the court for delivery to the proper parties, after deducting the costs of the suit. After the defendants had filed their respective answers, the Court of First Instance of Manila rendered a decision the dispositive part of which reads as follows:

"Wherefore, judgment is hereby rendered in favor of the defendants, and the plaintiff is ordered to pay said defendants out of the P20,000 minus the costs in its favor, in the following order: first, the Collector of Internal Revenue to be paid the sum of P3,216.08; second, Jose Santos and Dominador Nepomuceno to be paid the sum of P10,000; third, the defendant Pablo Roman to be paid the sum of P9,000, with six per centum interest per annum from the date of the filing of complaint in Civil Case No. 73256 and his costs in said case out of the remaining balance; forth, the defendant Domingo E. Leonor to be paid the sum of P20,000 with interest of six per centum per annum from the date of the filing of the complaint in Civil Case No. 1749, should there be any balance; and fifth the defendant Marciano de la Paz to be paid the sum of P6,001.50 with interest of six per centum from February 5, 1947, the date of the demand, plus P545 as costs and sheriff's fees should there be any balance left."

From this judgment, which applied section 315 of the National Internal Revenue Code and article 1924, paragraph 3, of the old Civil Code, the defendants Marciano de la Paz and Domingo Leonor appealed. Briefly the contention of appellant Marciano de la Paz is that his claim for P6,001.50 should enjoy first priority, because on February 5, 1947, he caused to be garnished the proceeds in question, said garnishment being prior to all other liens. The appellant Domingo Leonor in turn contends that his claim for P2,300 is superior, except with regards to the tax lien of the Collector of Internal Revenue, because it is evidenced by a public document dated July 19, 1946, in addition to the fact that he garnished the disputed insurance proceeds on February 17, 1947. Incidentally it is insisted for both appellants that, where priority of attachments is involved, article 1924 of the Civil Code is not applicable. Appellant de la Paz further argues that article 1924 may be invoked only when there is a showing of the debtor's insolvency.

In the first place, we may point out that, where the debtor was insolvent, article 1924 was held not applicable, since it was considered repealed insofar as it referred to cases of bankruptcy and estates of deceased persons. (Peterson vs. Newberry et al., 6 Phil., 260.)

In the second place, we find that the law on attachment and the law on preference of credits under article 1924 of the Civil Code had been applied by this court hand in hand, as may be gleaned from the following pronouncements in the case of Kuenzle & Streiff vs. Villanueva, 41 Phil., 611, 614-615:

"In other words, the question for consideration is whether an attachment levied on specific property gives to the attaching creditor a lien or a right to a preference in the nature of a lien, superior to the statutory right to a preference which is recognized in article 1924 of the Civil Code in favor of the owner of an after-acquired judgment.

"In a long and unbroken line of decisions, running through our reports from the first volume down to the last, we have uniformly and steadfastly sustained and recognized the statutory preferences created by the provisions of title 17 of the Civil Code, save only in so far as they have been expressly or by necessary implication repealed or modified by Acts of the Commission or the Legislature."

* * * * *

"Upon full consideration of the provisions of the New Code of Civil Procedure by virtue of which levies of attachments are authorized, and of the circumstances under which that Code was enacted by a commission the majority of whose members were American lawyers, we are satisfied that it was the intention of the legislature to give as attaching creditor a lien or at least a right in the nature of a lien in the attached property; but we see no reason whatever for holding that this lien, or right in the nature of a lien, rises superior to any statutory preferences with which the property is affected at the time of its attachment."

We shall therefore proceed to determine the order of preference herein, in the light of priority both by reason of attachments and by reason of article 1924 of the Civil Code, subject however to the superior lien of the Collector of Internal Revenue Code in virtue of section 315 of the National Internal Revenue Code which provides as follows:

"Every internal revenue tax on property or in any business or occupation, and every tax on resources and receipts, and any increment to any of them incident to delinquency, shall constitute a lien superior to all other charges or liens' not only on the property itself upon which such tax may be imposed but also upon the property used in any business or occupation upon which tax is imposed and upon all property rights therein."

We are of the opinion that the trial court correctly ordered that the claim of the Collector of Internal Revenue be paid first. Said claim being for amusement taxes on the theater insured, constitutes a lien superior to all other charges or liens not only on the theater itself but also upon all property rights therein, including the insurance proceeds.

Under article 1924, paragraph 3, of the Civil Code, the order of preference is, first, in favor of credits evidenced by a public instrument, and, secondly, in favor of credits evidenced by a final judgment, should they have been the subject of litigation, the preference among the two kinds of credits being determined by priority of dates.

The trial court was also correct in placing the claim of Jose Santos and Dominador Nepomuceno second in the list of creditors, because their credit is evidenced by a public document dated May 23, 1946. Appellants, with appellee Pablo Roman, argue that said document cannot be classified as public, because its acknowledgment is not dated. This contention is not tenable, since an examination of the instrument shows that the body is dated at Manila on May 23, 1946, and in the acknowledgment the following appears: "Witness my hand and official seal in the date and place above mentioned." This recital logically refers to the date and place specified in the

preceding body of the document. There is no point in the observation that the credit of Santos and Nepomuceno, not being reduced to a judgment, should not be entitled to any preference binding against the Federal Films, Inc., which is not a party hereto, because article 1924 of the Civil Code as a matter of fact distinguishes credits evidenced by a public document from those evidenced by a judgment. At any rate, in so far as the absence in this case of the common debtor is concerned, all the defendants are on equal footing.

The next in preference, in our opinion, is the credit of appellant Domingo Leonor because, although he caused a notice of garnishment to be served upon the plaintiff on February 17, 1947, or subsequent to the notice of garnishment of appellant Marciano de la Paz on February 5, 1947, the former's credit is nonetheless evidenced by a public instrument dated July 19, 1946, duly presented as exhibit. Preference claimed under a public document is not lost by the mere fact that the credit is made the subject of a subsequent judicial action and judgment. Even appellee Pablo Roman admits this proposition.

The next preferred credit is that of defendant-appellee Pablo Roman, evidenced by a judgment which became final on September 26, 1946. It is contended on the part of appellant Domingo Leonor that said judgment was not yet final then, because an appeal was taken therefrom to the Supreme Court which resolved it in favor of appellee Pablo Roman only on May 27, 1947. However, as correctly observed by counsel for the latter, the judgment of September 26, 1946, was not appealed, and the petition filed before the Supreme Court was one for certiorari against the order of the trial court dismissing the appeal; and, indeed, two writs of execution had been issued during the pendency of the certiorari proceeding, one on December 24, 1946, and another on January 9, 1947. In *McMicking vs. Lichauco*, 27 Phil., 386, it was held that "a judgment upon which execution has not been stayed, under the provisions of section 144 of Act No. 190, is entitled to the preference provided for in article 1924 of the Civil Code."

The remaining credit to be paid is that of appellant Marciano de la Paz, whose notice of garnishment was served on the plaintiff on February 5, 1947, the appealed decision being correct on this phase of the case. Serapion D. Ynigo failed to present any evidence in support of his claim.

It being understood that the various claimants should be paid in the order indicated in this decision, and that none of them is entitled to receive any interest (as the plaintiff-appellee cannot be deemed as having defaulted in paying out the insurance proceeds in question), the appealed judgment, as thus modified, is hereby affirmed. So ordered without costs.

Pablo, Bengzon, Montemayor, Reyes, A.t Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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