

**THE SHERIFF OF THE CITY OF MANILA, PLAINTIFF AND
INTERPLEADER, VS. ANGEL JOSE REALTY CORPORATION, INC.,
DEFENDANT AND APPELLANT.***G. R. No. 11787. November 28, 1958*

Ponente: LABRADOR, J.

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The sheriff of Manila instituted this action of inter-pleader against Soledad Alconcel and Wilhelmina Carlos, on the one hand, and Angel Jose Realty Corporation, Inc., on the other, to compel them to litigate their respective claims to the sum of P783.85 that was in his possession by virtue of a writ of execution issued by the Court of First Instance of Manila in criminal case No. 13731. Soledad Alconcel and Wilhelmina Carlos claim the whole sum by virtue of a judgment in criminal case No. 13731 of the Court of First Instance of Manila, while Angel Jose Realty Corporation, Inc., claims the sum as unpaid rentals of an apartment occupied by Jose Romualdez. The claim of the former arose from a counter-bond or surety bond which they had executed in favor of Jose Romualdez. The claim of the latter is that the sum of P783.85 represents the rentals of an apartment occupied by Romualdez, corresponding to the period from July to September 30, 1955.

The properties which were sold in execution by virtue of criminal case No. 13731 were movable properties belonging to Romualdez located at room No. 405 of the Teodorica Apartments rented by said Romualdez from the realty corporation. When after paying the claims of Alconcel and Carlos, the amount of P783.85 remained in, the hands of the sheriff, the realty corporation petitioned the Court of First Instance for permission to intervene, but this was denied, so the realty corporation brought a civil case in the municipal court of Manila against Romualdez for the back rentals due from the apartment occupied by the latter, and judgment having been obtained from the said court, a writ of execution was issued by it on March 10, 1956, ordering the sheriff of Manila to deliver to the realty corporation the said sum of P783.85.

The lower court found that as the credit of Alconcel and Carlos arose from the execution of the judgment in criminal case No. 13731, in which the writ of execution was issued on September 10, 1955, while that upon which Angel Jose Realty Corporation, Inc. bases his claim is the writ dated March 10, 1956, the claim of Alconcel and Carlos over the disputed sum has preference to that of the realty corporation, in accordance with Article 2244, paragraph (7) of the Civil Code. In consequence, the court ordered judgment for the payment of the disputed sum to Alconcel and Carlos. Against this judgment the present appeal has been instituted in this Court.

The realty corporation argues that its claim arose from unpaid rentals and the disputed sum came from the sale of movables located in the rented premises, and that its claim should, therefore, be considered as one falling under paragraph (12) of Article 2241, which read as follows:

"Art 2241. With reference to specific movable property of the debtor, the following claims or liens shall be preferred:

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"(12) Credits for rent for one year, upon the personal property of the lessee existing on the immovable leased and on the fruits of the same, but not on money or instruments of credit;"

The contention of appellant is well founded. The case of McMicking vs. Padern, Moreno, Jimenez and Co., 36 Phil., 987 is on all fours with the present case, the claimants in that case being in the same position as the claimants in the case at bar. In that case we held:

"While the judgment of the appellee Peterson antedates the judgment of Natalia Pascual Casal, and while, under section 1924 of the Civil Code, he would, therefore, have a preference over Natalia Pascual Casal, yet the record shows, and the fact is not denied, that the judgment in favor of Natalia Pascual Casal was for rents due and payable for the use and occupation of the building occupied by the insolvent. For that reason, therefore, by virtue of paragraph 7 of article 1922 of Civil Code, Natalia Pascual Casal has a preference in the payment of her debt over that of Peterson."

Similarly, while the claim of Alconcel and Carlos appears to be previous because it arose from an execution issued in criminal case No. 13731, dated September 10, 1955, while the judgment in favor of the realty corporation came on a subsequent date, namely, March 10, 1956, the latter has preference over that of the former because the disputed sum is part of the proceeds of the sale of movables found in the apartment of lessee Romualdez, and the claim of the realty corporation is for the rents due on said apartment from July to September, 1955. It is to be noted that Article 2241 and not Article 2244 is applicable because the funds subject of dispute come from specific movable property of the debtor over which Article 2241 establishes preferred claims or liens. Article 2244 applies to other property of the debtor. Hence, it is not applicable to the case at bar.

Wherefore, the judgment appealed from is hereby set aside, and one is hereby entered in favor of defendant-appellant Angel Jose Realty Corporation, Inc., ordering the sheriff to deliver the amount to the latter. Costs against defendants-appellees Soledad Alconcel and Wilhelmina Carlos.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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