

**THE CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES,
PLAINTIFF-APPELLEE, VS. COLLECTOR OF INTERNAL REVENUE, ET
AL., DEFENDANTS-APPELLEES. MADRIGAL SHIPPING CO., INC. AND
CESARIO...**

G.R. No. 21835. August 19, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

C.Y. George Khoong and K.H. Powel Khoong, father and son, and business partners, organized the Leyte Supply Corporation which acquired from the U.S. Foreign Liquidation Commission surplus war materials worth P160,000.00. In June 1948 the Khoongs purchased from said corporation the same war materials. Subsequently, they hired Cesario Sipaco to possess, keep and administer said surplus materials while the same were stored in Tacloban City. Next, they chartered the steamship *Lepus* of the Madrigal Shipping Co., Inc. to transport the surplus materials to Hong-kong.

SS "*Lepus*" arrived in Tacloban and the Visayan Workers Union loaded the war materials on board, after which it sailed for Hongkong via the Port of Manila. While docked in Manila its cargo of surplus war materials were seized by the Government pursuant to Executive Order No. 339 dated August 7, 1950. Whereupon, the cargo was unloaded at Pier 11 and later on stored in Hangar 801 in Nichols Air Base.

Upon prior authority of their owners, the Armed Forces of the Philippines used some of the confiscated cargo for which it agreed to pay the price fixed of P24,292.00. This amount, however, could not immediately be paid direct to the owners inasmuch as the Armed Forces received several claims on the cargo which far exceeded the agreed price of P24,292.00.

On January 21, 1953 the Chief of Staff of the Armed Forces of the Philippines filed a complaint in inter-pleader with the Court of First Instance of Manila against the several claimants.

Meanwhile, with leave of court, the remaining surplus goods were sold at public auction. The proceeds thereof plus the sum of P24,292.00 paid by the Armed Forces, amounting to P29,948.50, were deposited with the clerk of the trial court.

On March 23, 1963 the lower court rendered the following judgment:

"WHEREFORE, judgment is hereby rendered declaring the claim of the Bureau of Internal Revenue in the amount of P10,100.00, the claim of Madrigal Shipping Co., Inc. in the amount of P37,250.00, the claim of the Philippine Port Terminal, Inc. in the amount of P5,000.00 and the claim of the Visayan Workers' Union in the amount of P5,073.00 preferred credits with respect to the amount of P29,948.50 now in the possession of the Clerk of this Court, pursuant to the provisions of Article 2241 of the Civil Code. The claim of the Bureau of Internal Revenue, in the amount of P10,100.00 shall first be satisfied and the claims of the Madrigal Shipping Co., Inc., the Philippine Port Terminal, Inc., and the Visayan Workers' Union shall be satisfied pro

rata from the balance after the payment of the costs of this action, pursuant to the provisions of Article 2249 of the Civil Code."

Madrigal Shipping Co., Inc. and Cesario Sipaco appealed to this Court on purely legal issues which are:

1. With respect to the preference of credits among the claimants, should the Spanish Civil Code of 1889 or the New Civil Code of the Philippines (Republic Act 386) be applied?
2. Under the proper law, who among the claimants enjoys preference?

All the claims against the goods in question matured and became demandable prior to the effectivity of the Civil Code of the Philippines. Consequently, the law prevailing at the time, that is, the Spanish Civil Code of 1889, should govern the preference of credits.[1]

It is contended that the claim of the Collector of Internal Revenue for sales taxes on the goods in question is not preferred because (1) the Khoongs were not the persons liable for the sales taxes thereon for they were not the importer of said goods,[2] not to mention that the tax lien does not follow the goods into the hands of a third party who has no knowledge of the outstanding tax liability,[3] and (2) a surety bond has been posted to answer for the tax liability.

The theory of non-liability of the Khoongs for the sales taxes on the surplus goods in question for the reason that they were not the importer thereof will not hold, considering that the Khoongs assumed liability for said taxes.[4] This assumption of liability on the part of the Khoongs is understandable and must have been made with good reason. The Khoongs are the 90% owner of Leyte Supply Corporation, the original importer. As a matter of fact, they have considered themselves as the original purchasers of the surplus goods from the U.S. Foreign Liquidation Commission as can be seen from their statements, to wit:

"WHEREAS, we have rights, title and interests over the following properties which we - through the Leyte Supply Corporation bought from the Foreign Liquidation Commission. x x x"[5]

"x x x and over all the surplus goods we purchased under VSD Contract P.O. 489, In-voice No. 527-RP, from the Foreign Liquidation Commission, U.S.A., loaded at Tacloban, Leyte in the S/S LEPUS and later unloaded at the port of Manila, x x x."[6]

As to the argument of non-existence of the tax lien, it is observed that Article 1922 of the Spanish Civil Code of 1889 does not provide for taxes as preferred credits or liens. Sec. 315 of the National Internal Revenue Code however states:

"SEC. 315. Nature and extent of tax lien. - Every internal-revenue tax on property or on 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 the tax is imposed and upon all property rights therein."

Accordingly, the lien for sales taxes on the surplus goods has attached from the moment they were due and shall continue to exist in accordance with law.[7] Section 315 of the Tax Code, the pertinent law, limits to five years the duration of the lien for estate and gift taxes, but remains silent with respect to all other internal revenue taxes. Consequently, the lien as to all those other taxes continues until there is payment or the lapse of the period within which the Commissioner of Internal Revenue may assess and collect them pursuant to Sections 331 to 333 of the Tax Code, whichever comes earlier. The alleged dissolution of the lien by reason of the filing of a surety bond to answer for the payment of taxes due, finds no support in the law.

Madrigal Shipping Co., Inc. maintains further that the claim of the Visayan Workers Union in the amount of P5,073.00 representing stevedoring wages in loading the surplus goods in question aboard SS "Lepus" is not pre-ferred under Article 1922 of the Spanish Civil Code of 1889 nor under Article 2241 of the Civil Code of the Phi-lippines; and that claims for laborers' wages mentioned in paragraph (6) of Article 2241 of the Civil Code of the Philippines refer to labor in productive industrial enti-ties and not to stevedoring.

As aforesated, the Civil Code of the Philippines does not apply herein and so We shall confine the inquiry to the Spanish Civil Code.

Article 1922 of the Spanish Civil Code fails to men-tion claims for laborers' wages as among those given pre-ference. Apparently, the proposition that stevedoring wages are not preferred has merit. However, paragraph 4 of said article gives preference to credits for transportation of goods and expenditures for the carriage and preservation thereof, under which the stevedoring wages can be classified.

Stevedoring refers to the carriage of goods from the warehouse or pier to the holds of the vessel.[8] It is a necessary operation in the transportation of goods by sea. Accordingly, the expenses incurred therefor in the form of wages are necessary expenditures in the carriage of the goods.

With respect to the claim of the Philippine Ports Terminal for arrastre and storage fees which the lower court declared as preferred, We are convinced that it consti-tutes a credit contemplated in paragraph 4 of Article 1922 of the Civil Code of 1889, it being an expense for the preservation of the goods. The arrastre and storage ser-vice was rendered by the Philippine Ports Terminal after the surplus goods were unloaded at Pier 11 of the Port of Manila preliminary to their transfer to Nichols Air Base. Without the services of the Philippine Ports Terminal, said goods would have been left on the pier exposed to the ele-ments and pilferage.

We now come to the claim of defendant-appellant Cesario Sipaco whose credit was not recognized by the trial court as preferred. On September 2, 1948 the Khoongs sent Cesario Sipaco a letter-appointment[9] worded as fol-lows:

"Effective as of September 1, 1948, you are appointed as an administrator of our company (Leyte Supply Enterprise) with a compensation of ONE HUNDRED SEVENTY-FIVE PESOS (P175.00) a week. Your travel expense outside of Tacloban on official business will be borne by the company."

Subsequently, the Khoongs executed a power of attorney dated April 8, 1949 in favor of Cesario Sipaco and We quote:[10]

"KNOW ALL MEN BY THESE PRESENTS:

"That C.Y. GEORGE KHOONG and K.H. POWELL KHOONG, both of legal age, married and resi-dents of 601 Columbia Road, Shanghai, the lat-ter being represented in this act by the for-mer, have named and constituted and by these presents name and constitute C.R. SIPACO, of legal age, married and resident of Tacloban, Leyte, to be their true and lawful attorney-in-fact for them and in their name, place and stead and for their use and benefit, to do and perform all or any of the following acts and things, namely:

"1. To demand and receive from CECIL L. MARQUIS any and all of the properties and commodities, including the books of accounts and other records, which belong to C.Y. George Khoong and K.H. Powell Khoong by virtue of their purchase of the same from the Leyte Supply Corporation which properties consist of:

"aircraft spare parts and accesso-ries, communications and signal equipment, radio spare parts and accessories, radio testing and aircraft testing equip-ment with an approximate tonnage of 5,700 measurement tons, at present located among others at

"Cebu City - 165 F. Gonzales St., down and upstairs

"Tacloban, Leyte - Veteranos St.

and to issue proper receipt therefore;

"2. To possess, keep and administer the foregoing properties located in Tacloban, Ley-te, with power to dispose of so much of said properties from time to time as he shall think fit;

"3. To ship and transport the foregoing properties to Shanghai or to any other port designated by any or either of the above-named Khoongs;

"4. To demand, institute legal proceed-ings for, and receive from Cecil L. Marquis the properties as aforestated and from any and all persons such payments for the sale of the properties he is herein authorized to dis-pose of - with power and authority to execute and deliver full receipts for all payments made to him;

"5. To make, sign, seal, execute and de-liver contracts, documents, agreements and other writings of whatever nature or kind with any and all third persons, concerns, or enti-ties upon such terms and conditions as he shall think fit;

"6. To open accounts in any bank in the Philippines, to deposit money and to withdraw the same by check, receipt, draft or any other written instrument in the name of C.Y. George Khoong and/or Leyte Supply Enterprise; to sign, indorse, draw, accept, make, execute, deliver, and cash treasury warrants, checks, drafts, bills of exchange, promissory notes, and all other kinds of negotiable instruments and com-mercial papers;

"7. In general, to do all other acts, deeds, matters and things whatsoever in or about our estate, property, and affairs as fully and effectually to all intents and pur-poses as we could do in our own proper per-sons if personally present.

"HEREBY GIVING AND GRANTING unto our said attorney-in-fact full power and authority what-soever requisite and necessary or proper to be done in and about the premises, as fully to all intents and purposes as we might do or could lawfully do if personally present, and hereby ratifying and confirming all that our said at-torney-in-fact shall do or cause to be done under and by virtue of these presents.

"IN WITNESS WHEREOF, they have caused these presents to be signed on this 8th day of April, 1949 in the City of Manila, Philip-pines."

By virtue of the two documents mentioned above, Sipaco rendered service for the Khoongs and allegedly made advances in the sum of P2,300.00 for the safekeeping and preservation of the surplus materials involved in this case. His advances and salaries which have remained un-paid totalled P9,050.00. In 1951 he obtained from the Court of First Instance of Manila a judgment (based on compromise) for said amount of P9,050.00 against the Khoongs, who thereafter assigned to him their right to collect from the Armed Forces of the Philippines up to said amount plus costs and fees.

Sipaco's claim of preference comes within the pur-view of paragraph 1 of Article 1922 of the Civil Code of 1889, which reads:

"1. Credits for the construction, re-pair, preservation, or purchase price of personal property in the possession of the debtor, to the extent of the value of the same;" (emphasis supplied)

as an expense for the preservation of the surplus goods. It is not disputed that Sipaco was hired, and that he rendered service primarily to keep and preserve the goods in question. The stay of the surplus goods in Tacloban was more or less temporary, for their owners intended them to be shipped to Hongkong. Really there was nothing more for him to do but preserve the goods in good condi-tion while awaiting shipment.

WHEREFORE, the judgment appealed from is modified. The claims of the Collector of Internal Revenue in the amount of P10,100.00, Madrigal Shipping Co., Inc. in the amount of P37,250.00, Philippine Ports Terminal, Inc. in the amount of P5,000.00, Visayan Workers Union in the amount of P5,073.00 and Cesario Sipaco in the amount of P9,050.00 are declared preferred credits. The claim of the Collector of Internal Revenue shall first be satisfied, after which the claims of Madrigal Shipping Co., Inc., Philippine Ports Terminal, Inc., Visayan Workers Union and Cesario Sipaco shall be satisfied pro rata in accordance with Article 1926 of the Civil Code of 1889. No costs.

SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., on official leave.

[1] Luzon Lumber & Hardware Co., Inc. v. Quiambao, L-5638, March 20, 1954; 94 Phil. 663.

[2] Collector of Internal Revenue v. Cojuangco, L-13255, Sept. 29, 1960.

[3] Hongkong & Shanghai Banking Corporation v. Rafferty, 39 Phil. 145.

[4] Exhibit 1-Collector.

[5] Exhibit A-Quisumbing.

[6] Annex K to Complaint, p. 59, Record on Appeal.

[7] Cooley, Thomas M., The Law of Taxation, 4th Ed., p. 2463, Vol. III; Philippine Education Co. v. Tan Tay Pao, 56 Phil. 817.

[8] Cebu Arrastre Service v. Collector of Internal Revenue, L-7444, May 30, 1956; Collector of Internal Revenue v. Bohol United Workers, L-17876, May 26, 1960.

[9] Exhibit 1-Sipaco.

[10] Exhibit 2-Sipaco.

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