

**THE YEK TONG LIN FIRE & MARINE INSURANCE CO., LTD.,
PLAINTIFF AND APPELLANT, VS. PELAGIO YUSINGCO ET AL.,
DEFENDANTS. VICENTE MADRIGAL, APPELLANT.**

G. R. No. 43608. July 20, 1937

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DIAZ, J.:

The plaintiff, Yek Tong Lin Fire & Marine Insurance Co., Ltd. and the defendant Vicente Madrigal appealed from the judgment of the Court of First Instance of Manila, ordering (a) the defendant Pelagio Yusingco to pay to the plaintiff the sum of P17,590.85 with interest thereon at 12 per cent per annum from August 10, 1932, until fully paid, plus the sum of P4,500 as attorney's fees and the costs of the suit; (b) the defendant Vicente Madrigal to turn over to the plaintiff the amount of money received by him in October, 1932, from his co-defendant provincial sheriff of Surigao, and (c) absolving said sheriff from the complaint.

The appeal of the defendant Vicente Madrigal according to him, is based on the ground that the lower court committed the following alleged errors:

"I. In holding that the claim of the plaintiff, as mortgagee, is superior to his, as assignee of the preferred credit of Earnshaw Docks & Honolulu Iron Works, which had made some repairs on the steamship Yusingco;

"II. In ordering him to turn over to the plaintiff the amount of money received by him from the defendant provincial sheriff of Surigao, named Protolico P. Egay, which formed a part of the proceeds of the auction sale of the steamship Yusingco, and

"III. In denying his motion for a new trial based upon his allegation that the decision is contrary to law and the evidence taken."

The plaintiff's appeal, in turn, is due to the fact that, according to it, the lower court erred in absolving the defendant provincial sheriff of Surigao, and in denying its motion for a new trial based on the ground that the decision, in so far as it absolves said sheriff from the complaint, is not supported by the evidence and is contrary to law.

The facts pertinent to the case, as inferred from the stipulation submitted to the lower court by the parties and from the same evidence taken during the trial, may be summarized as follows:

The defendant Pelagio Yusingco was the owner of the steamship Yusingco and, as such, he executed, on November 19, 1927, a power of attorney in favor of Yu Seguioc to administer, lease, mortgage and sell his properties, including his vessels or steamships (Exhibit N). Yu Seguioc, acting as such attorney in fact of Pelagio Yusingco, mortgaged to the plaintiff Yek Tong Lin Fire & Marine Insurance Co., Ltd., with the approval of the Bureau of Customs, the steamship Yusingco belonging to the defendant, to answer for any amount that said plaintiff might pay in the name of the defendant on account of a promissory note for P45,000 executed by it, upon receipt of said sum as loan from the China Banking Corporation, on September 25, 1928, and on account of a guaranty in the sum of P20,000 subscribed by it in favor of said bank on the 17th of said month and year, the

deed, Exhibit A, having been executed to that effect, in absolute conformity with the Chattel Mortgage Law.

One year and some months later, or in February, 1930, and in April, 1931, the steamship Yusingco needed some repairs which were made by the Earnshaw Docks & Honolulu Iron Works upon petition of A. Yusingco Hermanos which, according to documentary evidence of record, was co-owner of Pelagio Yusingco. The repairs were made upon the guaranty of the defendant and appellant Vicente Madrigal at a cost of P8,244.66.

When neither A. Yusingco Hermanos nor Pelagio Yusingco could pay said sum to the Earnshaw Docks & Honolulu Iron Works, the defendant and appellant Vicente Madrigal had to make payment thereof with the stipulated interest thereon, which was at the rate of 9 per cent per annum, on March 9, 1932, because he was bound thereto by reason of the bond filed by him, the payment then made by him having amounted to P8,777.60. On said date, but after the credit of the Earnshaw Docks & Honolulu Iron Works, for the repairs made by it on the steamship Yusingco had already been paid, said company assigned its credit against A. Yusingco Hermanos to the defendant and appellant Vicente Madrigal, by executing to that end the instrument Exhibit 5, which was duly registered in the Bureau of Customs. Some days later, when said defendant discovered that he was not to be reimbursed for the repairs made on the steamship Yusingco, he brought an action against his codefendant Pelagio Yusingco and A. Yusingco Hermanos to compel them to reimburse him, thereby giving rise to civil case No. 41654 of the Court of First Instance of Manila, entitled "Vicente Madrigal, plaintiff, vs. Pelagio Yusingco and A. Yusingco Hermanos, defendants" (Exhibit 6), which resulted in a judgment favorable to him and adverse to the Yusingcos, as the latter were ordered to pay him the sum of P3,269.66 plus interest thereon at 9 per cent per annum from February 27, 1930, and also to pay him the sum of P4,97.5 plus interest thereon at said rate of 9 per cent per annum from May 6, 1931, with the costs of the suit. It was provided in the judgment that upon failure of the Yusingcos to pay the above-stated amounts to Vicente Madrigal, a writ of execution would be issued in order to have the steamship Yusingco sold at public auction for the purpose of satisfying said amounts with the proceeds thereof.

Inasmuch as neither the defendant Pelagio Yusingco nor A. Yusingco Hermanos paid the amount of the judgment rendered in civil case No. 41654, in favor of the defendant and appellant Vicente Madrigal, the latter sought and obtained from the Court of First Instance, which tried the case, the issuance of the corresponding writ of execution (Exhibit 8). However, before the sale of the steamship Yusingco, by virtue of the writ of execution so issued, was carried out, the plaintiff and appellant filed with the defendant sheriff a third party claim demanding said ship for himself, alleging that it had been mortgaged to him long before the issuance of said writ and, therefore, he was entitled to the possession thereof. The defendant sheriff then informed the defendant and appellant Vicente Madrigal that if he wished to have the execution sought by him carried out, he should file the indemnity bond required by section 451 of Act No. 190. This was done by Vicente Madrigal, but in order to prevent him and the sheriff from proceeding with the execution, the plaintiff and appellant instituted this case in the court of origin and asked for the issuance of a writ of preliminary injunction addressed to said two defendants to restrain them from selling the steamship Yusingco at public auction. The writ of preliminary injunction, which was issued on August 19, 1932, was later dissolved, the defendant and appellant Vicente Madrigal having filed a bond of P5,000. This left the preliminary injunction unimpaired and valid for the sale of the steamship Yusingco at public auction. For this reason, said ship was sold at public auction on September 19, 1932, and was purchased, under the circumstances, by the plaintiff and appellant itself, which was the highest bidder, having made the highest bid of P12,000 (Exhibit 8). Of said amount, the defendant sheriff turned over P10,195 to Vicente Madrigal in payment of his judgment credit, distributing the balance in the manner stated in Exhibit 9. It is said sum of P10,195 which the lower court ordered Vicente Madrigal to turn over to the plaintiff.

In addition to the foregoing facts, it should be stated that when the defendant and appellant Vicente Madrigal

instituted said civil case No. 41654 against Pelagio Yusingco and A. Yusingco Hermanos in March, 1932, the steamship Yusingco was already in the possession of Pelagio Yusingco in the port of Surigao (Stipulation of Facts, paragraph VI).

It should be added further that the payments made by the plaintiff on account of the credit of the China Banking Corporation against Pelagio Yusingco, by virtue of the deed of mortgage executed by the latter in favor of said plaintiff, through an attorney in fact, encumbering the steamship Yusingco, amounted to only P16,190.83 plus P700 as insurance premium, which are still less than that adjudicated to the plaintiff by the lower court.

The parties seem to believe that the important if not the only question to be decided is whether or not the credit of the plaintiff, as mortgage creditor of Pelagio Yusingco, is superior to that of Vicente Madrigal, as judgment creditor of said Pelagio Yusingco and A. Yusingco Hermanos. If the plaintiff is to be believed, it seems clear that as they (the plaintiff, Pelagio Yusingco, Vicente Madrigal, and A. Yusingco Hermanos) are merchants, the provisions of the Code of Commerce should govern their acts (article 2, Code of Commerce). The plaintiff contends that if Vicente Madrigal enjoyed any preferred right at all, it could have been no other than that based upon article 580 of said Code. The pertinent part of said article reads:

"In all judicial sales of vessels for the payment of creditors, the said creditors shall have preference in the order stated:

* * * * *

"8. The part of the price which has not been paid the last vendor, the credits pending for the payment of material and work in the construction of the vessel, when it has not navigated, and those arising from the repair and equipment of the vessel and its provisioning with victuals and fuel during its last voyage.

"In order that the credits provided for in this subdivision may enjoy the preference they must appear by contracts recorded in the registry of vessels, or if they were contracted for the vessel while on a voyage and said vessel has not returned to the port of her registry, they must be made under the authority required for such cases and entered in the certificate of registry of the said vessel."

Basing its opinion upon the foregoing provision of law, the plaintiff contends that as the repairs made on the steamship Yusingco were not for averages suffered during its last voyage, the defendant Vicente Madrigal cannot invoke preferential right for having paid for them as guarantor. Granting this to be true, it does not follow that the plaintiff is entitled to recover from said Vicente Madrigal what the latter received from the defendant provincial sheriff of Surigao, by virtue of the execution of the judgment rendered in his favor. Neither does it follow that said defendant (Vicente Madrigal) has no other right of action against Pelagio Yusingco and A. Yusingco Hermanos for the recovery of what he had paid for them, particularly when the Earnshaw Docks & Honolulu Iron Works, which had performed the repairs in question, assigned to him the credit it had against them. There is no doubt that under the provisions of article 1922, paragraph 1, of the Civil Code, the Earnshaw Docks & Honolulu Iron Works was entitled to recover the cost of said repairs (*International Banking Corporation vs. Corrales*, 10 Phil., 435; *Bank of the Philippine Islands vs. Walter A. Smith & Co.*, 55 Phil., 533), inasmuch as the steamship Yusingco, before as well as at the time of its sale at public auction by virtue of a judicial writ, was in the possession of the owners thereof, Pelagio Yusingco and A. Yusingco Hermanos, debtors of the plaintiff. If the Earnshaw Docks & Honolulu Iron Works had such right, naturally the defendant and appellant Vicente Madrigal later xhad such right, to the same extent as the former, by virtue of the assignment made to him after he, as guarantor, paid the obligation contracted by the Yusingcos with the Earnshaw Docks & Honolulu Iron Works for the repair of said vessel. This is necessarily so because the assignee is entitled to exercise the right and prosecute all actions belonging to the assignor (articles 1212 and 1528, Civil Code; section 114, Act No. 190).

When the plaintiff attempted to foreclose the mortgage constituted in its favor, first by filing its third party claim in civil case No. 41654 wherein the writ of execution, by virtue of which the steamship Yusingco was sold at public auction, was issued, its only right with respect to said vessel was to sell it judicially or extrajudicially in accordance with law, upon default in the performance of the conditions of the mortgage contract entered into between it and the owners thereof, in order to apply the proceeds of the sale to its mortgage credit against said owners, or at least against Pelagio Yusingco, if such proceeds are sufficient (*Bachrach Motor Co. vs. Summers*, 42 Phil., 3), and if insufficient, to collect the balance thereof on other property belonging to said defendants (Exhibit C, page 3). The steamship Yusingco was then in custodia legis and, under the circumstances, it could neither take possession thereof nor sell it pursuant to the conditions of its mortgage contract.

After the steamship Yusingco had been sold by virtue of the judicial writ issued in civil case No. 41654 for the execution of the judgment rendered in favor of Vicente Madrigal, the only right left to the plaintiff was to collect its mortgage credit from the purchaser thereof at public auction, inasmuch as the rule is that a mortgage directly and immediately subjects the property on which it is imposed, whoever its possessor may be, to the fulfillment of the obligation for the security of which it was created (article 1876, Civil Code); but it so happens that it can not take such steps now because it was the purchaser of the steamship Yusingco at public auction, and it was so with full knowledge that it had a mortgage credit on said vessel. Obligations are extinguished by the merger of the rights of the creditor and debtor (articles 1156 and 1192, Civil Code).

The conclusion arrived at by this court is that the defendant and appellant Vicente Madrigal enjoys preference in the payment of his judgment credit with the proceeds of the sale of the steamship Yusingco, by virtue of the assignment to him of the credit of the Earnshaw Docks & Honolulu Iron Works, because it is so provided not only in article 1922 of the Civil Code but also in article 1926, rule 4, thereof, notwithstanding the preference referred to in rule 1 of the latter article, which provides that credits secured by a pledge exclude all others to the extent of the value of the thing pledged, inasmuch as the plaintiff's credit is not secured by pledge but by mortgage, so much so that the mortgage deed executed in its favor contains a clause to the effect that if the proceeds of the sale of the steamship Yusingco, in case it is sold by reason of default in the performance of the conditions thereof, should be insufficient, the plaintiff could collect its credit on other property of the debtors (Exhibit C, page 3).

Rule 4 of the above-cited article 1926 reads: "In all other cases the value of the personal property shall be applied pro rata to the payment of the credits which enjoy special preference with respect to such property" and a vessel is personal property, as stated in the case of *Philippine Refining Co. vs. Jarque* (61 Phil., 229). Said rule refers to the credits stated in said article 1922 (12 Manresa, Civil Code, 706).

Having arrived at this conclusion, it becomes unnecessary to pass upon the other errors assigned by the parties, particularly if it is taken into consideration that the plaintiff-appellant has to date taken no action against the defendant sheriff for the recovery of the damages it claims to have suffered, upon the indemnity bond filed by the defendant and appellant Vicente Madrigal, in accordance with section 451 of Act No. 190, as amended by Act No. 4108 on December 6, 1933. Under said Act No. 4108 (section 2), all rights of action against indemnity bonds must be filed within the inextensible period of 120 days effective said date, December 6, 1933.

Wherefore, the appealed judgment is modified, reversing it in so far as it orders the defendant and appellant Vicente Madrigal to turn over to the plaintiff the amount of money paid him by the provincial sheriff of Surigao from the proceeds of the sale of the steamship Yusingco, and affirming it in so far as it absolves said sheriff from the complaint, with the costs to the plaintiff-appellant. So ordered.

Avancena, C, J., Villa-Real, Abad Santos, Laurel, and Concepcion, JJ., concur.

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