

MACONDRAY & CO., INC., PLAINTIFF AND APPELLANT, VS. MACARIO JOSE, DEFENDANT AND APPELLEE.*G.R. No. 45105. November 26, 1938*

Ponente: IMPERIAL, J.

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The plaintiff instituted in the Court of First Instance of Manila civil case No. 44533 against the defendant for the recovery of certain sums of money. Incidentally the plaintiff asked that, upon the previous filing of a bond, it be given possession of two refrigerators mortgaged to it by the defendant. The trial court granted said petition, but the defendant, having filed a bond through the Luzon Surety Co., Inc., retained possession of the refrigerators. In said case the defendant was ordered to pay the plaintiff the following sums: P216.14 with 12 per cent annual interest thereon from March 21, 1933; P425 with interest thereon at the same rate from February 12, 1933; P87.40 as attorney's fees, and P69.04 as costs. The decision thus rendered having become final, the defendant delivered the two refrigerators to the plaintiff. Said refrigerators, upon petition of the plaintiff, were sold by the sheriff at public auction and awarded to the former for the sum of P125. After deducting this sum from the amount of the judgment the defendant was still indebted to the plaintiff in the amount of P717.02. The defendant became insolvent, and to recover the balance of the judgment in its favor, the plaintiff petitioned for execution of the same against the surety, Luzon Surety Co., Inc. The trial court granted said petition but the defendant appealed from the order granting the same to this court. In case G. R. No. 42380 (April 29, 1935), the appeal interposed by the defendant, this court reversed the appealed order and sentenced the plaintiff to pay the costs. The costs taxed against the plaintiff amounted to P105. Before the case was remanded to the court of origin, counsel for the defendant, Zosimo Rivas, filed notice of his lien against his client, the defendant, and asked that the plaintiff be ordered to pay him the costs to which it was sentenced. This court denied said petition in its resolution of May 13, 1935.

After the case had been remanded to the trial court Attorney Rivas filed a motion praying that his lien on the costs be declared preferred and that a writ of execution be issued against the plaintiff for said amount. The trial court granted ex parte said motion and ordered the issuance of the writ of execution. Upon being notified of said order the plaintiff filed a motion praying that the same be set aside and that its right to the balance of the judgment be declared preferred and superior to the lien of Attorney Rivas, inasmuch as it was entitled to set-off the costs against the balance of the judgment still owing from the defendant. After hearing the parties, the trial court, in its order of December 20, 1935 denied the motion of the plaintiff and declared the lien of the attorney superior and preferred to the right invoked by the plaintiff. The latter appealed.

- In its first assignment of error the plaintiff contends that this court has definitely decided in its resolution of May 13, 1935 that its right to the balance of the judgment has preference over the lien of Attorney Rivas on the costs. We believe that this contention is well-founded. It will be recalled that Attorney Rivas not only filed notice of his lien but petitioned this court to order the plaintiff to pay him the costs. In his petition, at the same time a notice, he alleged that his right was based upon section 37 of the Code of Civil Procedure and that he knew that the plaintiff

was the creditor of the defendant for the balance of the judgment which it had obtained and not fully executed. Consequently the question of preference between his lien and the right of the plaintiff to the costs was raised. Between what has been decided and the present incident wherein the order of May 13, 1935 is invoked there exists perfect identity of parties, things or subject matter and causes of action (art. 1252, Civil Code; Ocampo vs. Jenkins and Worcester, 14 Phil., 681; Donato vs. Mendoza, 25 Phil., 57; Roman Catholic Archbishop of Manila vs. Director of Lands, 35 Phil., 339; Chua Tan vs. Del Rosario, 57 Phil., 411). On the other hand, this court had jurisdiction to determine who was entitled to the costs for it awarded the same to the defendant. Hence, the preference of the lien invoked by Attorney Rivas is already *res judicata*; and it having been decided that said preference does not exist, the trial court erred in issuing the appealed order.

- The plaintiff contends in his second and last assignment of error that assuming that the question of preference had not been decided in the resolution of May 13, 1935 and is not *res judicata*, the trial court, nevertheless, should have held that his right to the balance of the judgment is superior and preferred to the lien of Attorney Rivas. Considering the facts of the case we believe that this theory of the plaintiff is in accordance with law. Section 37 of the Code of Civil Procedure reads as follows:

"Sec. 37. Lawyers liens.—A lawyer shall have a lien upon all the funds and papers and documents of his client which may lawfully have come into his possession, and may retain the same until his lawful fees and disbursements due to him from his client have been paid, and may apply such funds to the satisfaction thereof. He shall also have a lien to the same extent upon all judgments and decrees for the payment of money, and executions issued in pursuance of such judgments and decrees which he has secured in a litigation of his client, from and after, but not before, the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment or decree, or issuing such execution, and shall have caused written notice thereof to be delivered to the adverse party, and shall have the same right and power over such judgments, decrees, and executions to enforce his lien as his client had or may have to the extent that may be necessary for the payment of his just fees and disbursements."

According to said section, the lien of the attorney on the documents and funds of his client which are found in his possession and on the judgment and decree which he has secured in favor of his client takes legal effect only from and after, but not before, notice of said lien has been entered in the record and served on the adverse party (*Menzi & Co. vs. Bastida*, 35 Off. Gaz., 773). Inasmuch as the judgment was obtained by the plaintiff against the defendant long before the lien of Attorney Rivas, which came into being only on May 8, 1935, the former has preference over the latter (article 1924 of the Civil Code).

In view of the foregoing considerations, the appealed order is hereby reversed and it is held that Attorney Zosimo Rivas is not entitled to the writ of execution applied for and issued, and that the plaintiff may set-off the costs to which it was sentenced against its credit, consisting in the balance of the judgment obtained by it against the defendant, with the costs of this instance against the defendant-appellee. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, and Concepcion, JJ., concur.

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