

**TIRSO GARCIA, AS LIQUIDATOR OF THE MERCANTILE BANK OF CHINA, PLAINTIFF AND APPELLANT, VS. TY CAMCO SOBRINO, DEFENDANT. THE GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE PROVINCIA...**

*G.R. No. 45701. April 18, 1939*

Ponente: LAUREL, J.

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**LAUREL, J.:**

This is an appeal from the decision of the Court of First Instance of Leyte declaring that the taxes due the Commonwealth of the Philippines are superior and preferred to the mortgage lien of the plaintiff, and dismissing plaintiff's complaint and cross-complaint with costs.

Prior to October 31, 1932, the Mercantile Bank of China and the defendant, Ty Cameo Sobrino, had maintained business relations as a result of which the latter became indebted to the former in divers amounts for the security of which two mortgages were given. On October 31, 1932, the plaintiff filed a complaint against the defendant in the Court of First Instance of Leyte for the foreclosure of the two mortgages. Later, this complaint was amended to substitute Tirso Garcia for plaintiff in his capacity as liquidator of the said bank. On November 10, 1932, the provincial lineal of Leyte, on behalf of the Government of the Philippine Islands, filed a petition, subsequently converted into a complaint in intervention, claiming for taxes due from the defendant the sum of P38,052.26 and praying that the same be declared preferred over the mortgage credit. To this, plaintiff filed an answer on June 9, 1933, which was amended on September 15, 1933 and September 14, 1934. On September 18, 1934, the provincial fiscal, on behalf of the provincial government of Leyte, filed a complaint in intervention, claiming ownership of the mortgaged property for having confiscated it on September 1, 1932 for non-payment of land taxes. The defendant was served with copies of the original, amended and intervention complaints, but as he neither appeared nor answered, a motion to declare him in default was filed on September 17, 1932. On July 31, 1936, with leave of court, the plaintiff filed a supplementary answer alleging that the taxes due the provincial government of Leyte had already been satisfied out of the proceeds of the sale of the mortgaged properties, and prayed, by way of cross-complaint, that the balance of P7,217.68 in the hands of the Collector of Internal Revenue, be ordered paid to the plaintiff. The provincial fiscal of Leyte, on behalf of the Government of the Commonwealth, filed an answer to the cross-complaint. On January 14, 1937, the parties submitted a stipulation of facts and the case was set for trial. After presentation of evidence for the Commonwealth of the Philippines, the fiscal moved for the dismissal of the complaint in intervention filed by the provincial government on the ground that the land taxes owed by the defendant had already been paid out of the proceeds of the sale of the mortgaged properties. On March 31, 1937, the court rendered its decision in favor of the intervenor. Hence, this appeal.

The appellant assigns four errors in his brief, the most important of which has reference to the question of preference of the taxes due the government over the mortgage lien of the plaintiff. With reference to the merchants' sales tax, there is no question that the defendant is indebted therefor for the years 1926 to 1928 in the amount of P16,338.56, and that notices were filed demanding their payment (Exhibits 11 and 12). It has also been

established that the properties covered by plaintiff's mortgages and which were sold by the provincial government of Leyte at public auction were used by the defendant in the business or occupation on which the merchants' sales tax had been assessed against him. This being the case the lien of the government on the properties is superior to the mortgage lien of the plaintiff (sec. 1588, Revised Administrative Code, as amended by sec. 29, Act No. 2833; *Bucoy vs. Torrejon, Jurika & Co.*, 34 Off. Gaz., 645, citing *Hongkong & Shanghai Banking Corporation vs. Rafferty*, 39 Phil., 145, and *Macondray & Co. vs. Go Bun Pin*, 52 Phil., 451). In the case of sales tax, section 1459 of the Revised Administrative Code fixes the percentage to be paid; the taxpayer is supposed to know the amount of the tax; and it is his duty to pay it without the need of any assessment.

With reference to the income tax lien, there is no necessity of making any pronouncement here as any such pronouncement would be unavailing, it being admitted that the amount remaining, and which is the subject of this controversy is not even sufficient to cover the amount of the merchants' sales tax lien, which we declare to be superior and preferred to the mortgage credit.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

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

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### RESOLUTION ON REHEARING

October 16, 1939

**LAUREL, J.:**

On April 18, 1939, we rendered a decision in this case affirming the appealed judgment of the Court of First Instance of Leyte, which declared that the taxes due the Commonwealth of the Philippines are preferred and superior to the mortgage lien of plaintiff-appellant and which dismissed the latter's complaint and cross-complaint, with costs. On a motion for reconsideration, we finally decided to hear the parties on a date set for that purpose. Neither the defendant nor the intervenors-appellees appeared or offered any objection to the petition that we render personal judgment in favor of the plaintiff-appellant. For the purposes of this resolution it need only be stated, in addition to what is related in our decision of April 18, 1939, that the proof shows that the total mortgage indebtedness due from the defendant Ty Cameo Sobrino to plaintiff-appellant as of September 30, 1939, is P126,152.87. Accordingly, the dispositive part of the decision rendered in this case on April 18, 1939, is hereby amended so as to read as follows:

"With the sole modification that the defendant Ty Cameo Sobrino is ordered to pay to plaintiff-appellant the sum of P126,152.87, with interest at the rate of 6 per cent per annum from October 1, 1932, the judgment appealed from is affirmed, with costs against the appellant. So ordered."

So ordered.

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

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