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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

VICKY MANALO ESPAYOS,

Plaintiff,

v.

PHILIPPINE GOODS
CONSTRUCTION, Inc., et. al

Defendants.

) Civil Action No. 95-1070

) **ORDER REGARDING RELEASE
OF ATTACHED FUNDS**

On November 6, 1996, this matter came before the Court on the motion of Defendant-Intervenor Department of Finance^{1/} (the Government) to release attached funds to pay taxes to the Commonwealth government. Representing the Government, Diane M. McDevitt, Esq. argued in favor of the release of such funds. Rodney J. Jacob, Esq. opposed the motion on behalf of Plaintiff Vicky Espayos (Plaintiff). The Court has reviewed the oral and written arguments of the parties and now renders its decision.

I. FACTS

On November 22, 1995, Plaintiff filed a complaint against Defendant Philippine Goods, Inc.

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^{1/} Intervening Defendants include the Acting Secretary of Finance Rufin S. Inos, the Department of Finance's Division of Revenue and Taxation, and the Division of Finance and Accounting for the CNMI.

1 (PGI), Philippine Goods Construction, Inc. (PGCI) and Victorino Villacrusis (Defendants) alleging
2 fraud and illegal transfer of PGI and PGCI stock. Upon motion by Plaintiff, this Court ordered a writ
3 of attachment on certain CNMI funds owed to Defendants by the Government on November 22, 1996.
4 With respect to the effectiveness of the writ of attachment, the Order provides: "Plaintiff shall provide
5 written notice of this Order to the manager of each named bank or financial institution in order to give
6 effect to this ruling." Shortly thereafter, said banks and financial institutions received written notice
7 of the writ of attachment triggering the effectiveness of the writ. On December 11, 1996, the Court
8 rejected Defendants' motion to quash the writ of attachment. In late December, after Plaintiff's writ
9 of attachment had become effective, but prior to any judgment in this matter, the Government
10 assessed an outstanding Gross Revenue Tax against PGCI and PGI. On February 12, 1996, the
11 Government filed gross revenue tax liens with the Recorder's Office against PGCI and PGI,
12 respectively. In October 15, 1996, the Government filed income tax liens with the Recorder's Office
13 against PGCI and PGI for delinquent Northern Marianas Territorial Income Tax (NMTIT). As of
14 October 11, 1996, the total amount of gross revenue tax and income tax, including interest, amounts
15 to \$159,848.88.

16 The Government contends that the CNMI government tax liens are superior to Plaintiff's
17 prejudgment writ of attachment eventhough such writ was filed prior to any of the government tax
18 liens. In support of this contention, the Government relies on 1 CMC §1701 of the Commonwealth
19 Code and Section 2210.4 of the Revenue and Taxation Regulations respectively for the propositions
20 that: (1) the Commonwealth Legislature has adopted the U.S. Internal Revenue Code and, (2) Section
21 2210.4 of the Revenue and Tax Regulations reiterates, and thus adopts, the federal statutory rule
22 contained in 26 U.S.C. § 6323 that a federal tax lien recorded after an attachment lien is superior,
23 as long as the tax lien is recorded before any ensuing judgment lien. *United States v. Security Trust*
24 *& Savings Bank*, 71 S.Ct. 111, 113 (1950) (hereinafter *Security Trust*).

25 In response, Plaintiff refutes the Government's contention that the Commonwealth Legislature
26 has stated any intention to apply the federal tax lien superiority doctrine to CNMI taxes. Absent such
27 a legislative statement, Plaintiff contends that CNMI tax liens should be viewed on a par with state
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1 tax liens, which are subject to the common law rule “first in time, first in right” and do not enjoy
2 priority status over attachment liens absent statutory authority to the contrary.

3 4 II. ISSUES

5 1. Whether CNMI government tax liens should be given priority over a previously filed writ
6 of attachment in a manner consistent with federal law.

7 8 III. ANALYSIS

9 A. Commonwealth Legislature’s Limited Adoption of the IRC Includes 26 U.S.C. § 6323

10 In support of its position that the Commonwealth Legislature has expressly adopted the Internal
11 Revenue Code, the Government directs the Court to 1 CMC § 1701 of the Commonwealth Code
12 entitled Application of the Internal Revenue Code, in General. Section 1701 states in pertinent part:

13 (a) The U.S. Internal Revenue Code . . . made applicable by this chapter, is a statute
14 adopted as a local territorial income tax. The IRC *as herein incorporated* is made part
15 of Commonwealth law and may be cited as the “Northern Marianas Territorial Income
16 Tax” (“NMTIT”)

17 1 CMC § 1701(a)(emphasis added). The following section, § 1702 is entitled Internal Revenue Code
18 Adopted, and predictably sheds further light on the extent to which the Commonwealth Legislature
19 chose to adopt the Internal Revenue Code:

20 (a) Definitions: “Internal Revenue Code”. “Internal Revenue Code” means the
21 following provisions of the Internal Revenue Code of 1954 as amended as of January
22 1, 1979, and as further amended as below specified, where not manifestly inapplicable
23 or incompatible with the intent of the Covenant or this Chapter: Subtitle A (26
24 U.S.C.A. sec. 1401 et seq.) and section 931 (26 U.S.C.A. sec. 9311); chapters 24 and
25 25 of subtitle C (26 U.S.C.A. secs. 3401 et seq. and 3501 et seq.), with reference to
26 the collection of income tax at source on wages; *and all provisions of Subtitle F (26*
27 *U.S.C.A. sec. 6001 et seq.) which apply to the income tax*, including provisions-as to
28 crimes, other offenses, and forfeitures contained in Chapter 75 (26 U.S.C.A. sec. 7201
et seq.)

24 1 CMC § 1702(a) (emphasis added). The Court has reviewed Title 26 of the United States Code, and
25 finds that 26 U.S.C.A. § 6323 is clearly a provision contained within Subtitle F of the I.R.C. which
26 applies to income tax. *See* 26 U.S.C.S. § 6323. Therefore, the Court finds that the language

1 contained in 1 CMC § 1702(a) suffices as an express adoption of that portion of the federal
2 government tax scheme addressing the priority of government tax liens.

3 The I.R.C. provides in pertinent part: “[A federal tax] lien shall not be valid against any
4 purchaser, holder of a security interest, mechanic’s lienor, or judgment lien creditor until notice
5 thereof. . .” 26 U.S.C.A. § 6323(a) (1954). This language was lifted verbatim from Section 3672
6 of the Internal Revenue Code of 1939 and has been the focal point of past U.S. Supreme Court cases
7 which discuss the treatment of federal tax liens filed after pre-judgment attachment liens. In *Security*
8 *Trust, supra*, the U.S. Supreme Court specifically addressed § 3672(a) and found that an attachment
9 lien filed prior to a federal lien must be considered inferior to the federal lien as long as the filing of
10 the federal lien precedes the judgment lien associated with the attachment lien. *Security Trust* at 113-
11 14, *see United States v. Acri*, 75 S.Ct. 239, 241 (1955) (federal court prioritized federal tax lien
12 despite state court’s characterization of attachment lien as “an execution in advance”).

13 Having determined that 1 CMC § 1702(a) requires the application of Section 6323 of the IRC
14 to the treatment of CNMI tax liens, this Court properly embraces U.S. Supreme Court determinations
15 in this area. Accordingly, this Court holds that CNMI tax liens are superior to previously filed,
16 prejudgment attachment liens.^{2/} Given the undisputed fact that Plaintiff’s attachment lien is as yet
17 unsupported by a judgment, the Court hereby **GRANTS** the Government’s motion to release attached
18 funds so that CNMI government taxes may be received by the Government in satisfaction of
19 Defendants’ current tax debt.

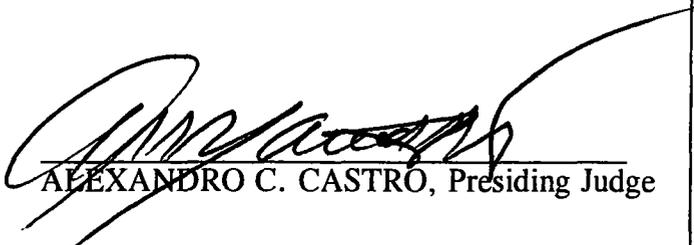
20 21 IV. CONCLUSION

22 For the foregoing reasons, the gross revenue tax liens and the income tax liens against PGI
23 and PGCi currently on file at the Recorder’s Office shall be paid to the CNMI government out of the
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25 ^{2/} In the Court’s view, an interpretation of Section 2210.4 of the Tax and Revenue Regulations
26 is unnecessary. Given the clear legislative intent to follow the federal model for superiority of
27 government tax liens, any potential Court interpretation of Section 2210.4 that conflicts with 26
28 U.S.C.A. § 6323 would have to be stricken under the doctrine of separation of powers as an
unconstitutional executive breach of a legislative function.

1 funds previously attached. Currently, all PGI and PGCi funds are being held in Bank of Hawaii
2 account nos. 32-036570 and 32036589, respectively. According to the Government, as of October
3 11, 1996, the total amount of gross revenue tax and income tax, including interest, amounts to
4 \$159,848.88. Within the next ten days, the Government shall prepare and submit an Order for the
5 Court's signature releasing all taxes and interest owed to the Government *as of November 15, 1996*
6 from the Bank of Hawaii accounts. The Order shall specify the total amount of taxes and interest to
7 be released from each of the bank accounts concerned. All remaining funds shall continue to be held
8 in the bank accounts pursuant to the writ of attachment.

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10 So ORDERED this 15 day of November, 1996.

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14 ALEXANDRO C. CASTRO, Presiding Judge
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