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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20540

*Ballun  
GCM*

**FILE: B-184727**

**DATE: February 14, 1977**

**MATTER OF: Payment to judgment creditor of corporation owed  
money by United States Army**

**DIGEST:** There is no basis in Army Regulations by which moneys owed by Army to firm of Frigorifico Parente, Inc., for debt incurred by Puerto Rican National Guard can be paid to judgment creditor of Frigorifico since there has not been valid voluntary assignment in accordance with statutory and regulatory provisions limiting such assignments and no bankruptcy proceedings have been initiated. Furthermore, facts do not support argument that Frigorifico's claim against the United States was assigned to creditors by operation of law, in which case anti-assignment provisions would not be applicable, since claim was not transferred pursuant to action of Court.

Major R.G. Shaffer, an authorized Finance and Accounting Officer for the United States Army at Fort McPherson, Georgia, has requested our decision as to whether moneys owed by the Army to the firm of Frigorifico Parente, Inc. (Frigorifico), representing a debt incurred by the Puerto Rican National Guard, can properly be paid to Camara de Comerciantes Mayoristas (Camara)--the judgment creditor of Frigorifico. Based on the information contained in the Accounting Officer's submission and in other pertinent documents, the facts concerning this matter are as follows.

During 1974, the Puerto Rican National Guard ordered various food-stuffs from Frigorifico, thereby incurring a total indebtedness of at least \$3,945.82. Prior to payment of this debt by the United States Army, Camara filed suit against Frigorifico on May 4, 1974, in the Superior Court of Puerto Rico to recover moneys owed by Frigorifico in payment for certain merchandise purchased on credit. On May 13, 1974, pursuant to a writ of attachment issued by the Superior Court, the Marshal was directed to attach property belonging to Frigorifico, including its accounts receivable, in order to secure the effectiveness of any judgment that might subsequently be entered in Camara's favor. In its answer to Camara's complaint, Frigorifico accepted all of the allegations set forth in the complaint. Consequently, on June 13, 1974, the court entered a judgment on the pleadings ordering defendant Frigorifico to pay Camara the sum of \$586,452.59.

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In the meantime an Army voucher was approved for \$2,425.51 and a check was issued and mailed to Frigorifico in partial payment of the debt incurred by the Puerto Rican National Guard. This check was returned as being undeliverable and was then cancelled. Later, another voucher dated April 22, 1974, in favor of Frigorifico for the amount of \$1,520.31 was submitted to the Army for payment by the Adjutant General of the Puerto Rican National Guard. In the letter accompanying the voucher, the Adjutant General requested that the total amount of money owed to Frigorifico on these two vouchers be paid to Camara pursuant to the money judgment obtained by Camara against Frigorifico. The Adjutant General based his request on the provisions contained in Chapter 9 of Army Regulation (AR) 37-107.

The submission to our Office questions the propriety of paying Camara noting the following:

"There is no known authority whereby Camara de Comerciantes Mayoristas may be paid the amount due Frigorifico Parente, Inc., unless there has been a valid assignment in accordance with Chapter 11, AR 37-107, or bankruptcy proceedings in accordance with Paragraph 9-25, AR 37-107. A valid assignment or bankruptcy proceedings have not been filed in this case. It is requested that the Comptroller General of the United States render a decision as to whether the amount due on the voucher dated 22 April 1974 and the amount of the returned check may be paid to Camara de Comerciante Mayoristas, based on the Court Order. Information has been furnished by the Adjutant General, Puerto Rico National Guard, that the firm of Frigorifico Parente, Inc. no longer exists."

Subsequently, in response to our attempts to obtain further information as to the precise status of Frigorifico, we were advised that the corporation was never dissolved, but that upon attachment of its property by Camara it apparently ceased operations and its principals disappeared.

We agree with the conclusion in the submission that there is nothing in either Chapter 9 or Chapter 11 of AR 37-107 which might, even arguably, afford us any basis upon which to approve payment to Camara of the moneys owed to Frigorifico. The pertinent portion of Chapter 9, AR 37-107, deals with payments to deceased or incompetent creditors as well as payment for supplies or services furnished subsequent to the filing of a petition in bankruptcy. Neither of these provisions is applicable to the instant factual situation, which involves moneys owed to a corporation which has apparently ceased doing business but has not initiated any insolvency proceedings.

Chapter 11 of AR 37-107, which is based on the general statutory limitation on the assignment of claims against the United States sets forth the only conditions under which the assignment of any claim against the United States will be allowed. See 31 U.S.C. § 203 (1970) and 41 U.S.C. § 15 (1970). Thus, paraphrasing 31 U.S.C. § 203, the regulation states that purported assignments of claims against the United States--

"\* \* \* will be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to make acknowledgements of deeds, and will be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgement, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

It is clear from the record before us that no voluntary assignment which satisfies the conditions set forth in this provision has been made by Frigorifico to Camara.

However, our Office, as well as the courts, have held that the statutory limitation on voluntary assignments does not apply to assignments made by operation of law. See 9 Comp. Gen. 72 (1929); B-183058, March 7, 1975; and cases cited in these decisions. The scope of this exception to the anti-assignment statutes is explained as follows in 6 Am. Jur. 2d, Assignments § 74:

"Transactions which have generally been considered as involuntary assignments or transfers by operation of law and so not within the prohibitions of the anti-assignment statutes, include transfers by subrogation; transfers under a judicial sale; transfers to bankruptcy or insolvency trustees or receivers, resulting from statute or order of the court; transfers by intestacy; and transfers and assignments of claims against the government, which are incidental to or result from corporate mergers, consolidations, reorganizations, or dissolutions."

Thus, if it could be determined that Frigorifico's claim against the United States was assigned to Camara by operation of law, we believe that the provisions of the anti-assignment statutes would not be applicable and payment could properly be made to Camara. Essentially, the doctrine of assignment by operation of law, although not specifically identified as such, appears to be the basis for Camara's claim that it is entitled to the moneys in question. In this regard we have informally been advised by legal counsel acting on behalf of Camara that the validity of the assignment of accounts receivable is created by the judgment of the Court in Camara's favor. In an attempt to obtain additional support for this argument, we requested Camara's legal counsel to provide us with further documentation demonstrating that an assignment of this claim by operation of law had in fact taken place so that Camara now "owns" the accounts receivable and is entitled to receive payment from the Government on the instant debt. The response we received from Camara's legal counsel did not furnish us with any official court documents indicating that such a transfer of this account receivable had actually been made. However, this letter did set forth more completely the basis for Camara's claim that it was entitled to the money owed to Frigorifico by the Government.

Essentially Camara's claim is based on several factors including the concessions set forth in the answer filed by Frigorifico to Camara's complaint, as well as the judicial order attaching Frigorifico's property and the judgment itself. After having considered each of these arguments, we do not believe that there is sufficient support in the record to satisfactorily demonstrate that Frigorifico's claim against the Government was actually transferred or assigned to Camara by operation of law.

With respect to the factual situation involved here, an assignment by operation of law might be said to have occurred if actual "ownership" of Frigorifico's assets, including its accounts receivable, was transferred to Camara by a judicial decree or as a result of "purchase" by Camara at a judicial sale. However, it does not appear from the record that such a transfer actually occurred. For example, to support its position Camara relies to some extent on Frigorifico's answer to its complaint which reads in pertinent part as follows:

"2. That we accept all the allegations contained in said complaint, -- that judgment be entered against us for the total sum claimed, that is, \$586,452.59 plus costs, expenses and attorneys fees, and that said judgment be final and enforceable from the date it entered.

"3. We further accept that all merchandise, equipment, motor vehicles, etc., presently deposited in the premises occupied by Frigorifico Parente, Inc. at 48 Georgetti Street, Caguas, P.R. be privately sold by plaintiff, Chamber of Wholesale Merchants, to whoever

and for the terms and conditions it may deem convenient, accepting any transaction carried out by the Chamber in compliance with the foregoing."

Nothing in the foregoing supports the argument that an assignment of the accounts receivable by operation of law actually occurred. First, paragraph 4 of the answer does not appear to apply to an intangible asset such as an account receivable since it refers to "all merchandise, equipment, motor vehicles, etc. presently deposited in the premises occupied by Frigorifico Parents, Inc." Moreover, even if it could be argued that the statement in paragraph 3 refers by implication to the moneys owed to Frigorifico by the United States, the statement would not constitute an assignment by operation of law under the criteria cited above; nor would it comply with the requirements for an assignment set forth in 31 U.S.C. § 207, supra.

Similarly, we reject the argument that the pre-judgment attachment of Frigorifico's assets by Camara, including the accounts receivable, is legally sufficient when combined with the money judgment later obtained against Frigorifico, to constitute an assignment by operation of law. The applicable provision of Puerto Rican law indicates that property is attached in order to secure the effectiveness of any subsequent judgment; See P.R. Laws Ann. tit. 32, id., App. II Rule 56. The attachment of the defendant's property prohibits him from alienating or encumbering the attached property, but does not operate as such to transfer title thereto to the plaintiff. CF., id., section 1077.

The judgment ultimately obtained here, being only a money judgment, establishes merely the existence of a liquidated debt between Frigorifico and Camara but does not have the legal effect of transferring title to any of Frigorifico's property to Camara. As stated in Rule 51, id., App. II, money judgments are customarily enforced by the issuance of a writ of execution which, if issued against the property of the judgment debtor, would require the marshal to satisfy the judgment out of the debtor's personal property. Under Puerto Rican law an order of attachment to secure the effectiveness of a judgment issued before or after judgment in a suit is not the equivalent of a writ of execution, since the latter is a final directive to seize and sell property of the judgment debtor to satisfy the judgment which has been rendered. See De Jesus v. Caribbean Trucking Co., 70 P.R.R. 527 (1949) note 7, P.R. Laws Ann., tit. 32 § 1070. Although on numerous occasions we requested Camara's legal counsel to furnish us with some documentary evidence indicating that by virtue of some other post judgment court order or proceeding Frigorifico's claim against the United States was actually transferred or assigned to Camara, we never received any such proof.

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In accordance with the foregoing, it is our conclusion that the moneys owed to Frigorifico Parente, Inc., by the United States cannot be paid to Camara de Comerciantes Mayoristas. However, our Office would be willing to reconsider this matter if we are provided with additional information establishing that Frigorifico's claim against the United States was actually transferred to Camara by operation of law. In the absence of satisfactory proof of such a transfer, any payment to Camara would not be authorized and would subject the United States to the possibility of double liability.

*R. J. K. 11/11*  
Deputy Comptroller General  
of the United States