

THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK, PLAINTIFF AND APPELLEE, VS. CENTRAL BANK OF THE PHILIPPINES, DEFENDANT AND APPELLANT.

G.R. No. L-20674. December 29, 1964

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from the decision of the Court of First Instance of Manila sustaining the contention of the plaintiff foreign corporation that it should be exempt from the payment of margin fees as required by the defendant Central Bank.

As may be gathered from the partial stipulation of facts and the other documentary evidence presented in this case, the appellee, the plaintiff, a foreign corporation, was licensed to do business in the Philippines. It purchased from the Rehabilitation Finance Corporation, RFC for short, RFC 1st Series Bonds in the amount of P250,000.00 on January 8, 1949. Upon their maturity on April, 1957, the proceeds thereof were not paid to the appellee but were instead immediately reinvested by the RFC to its 4% 25th Series Bonds which, in turn, matured on December 1, 1960.

On October 9, 1961, the appellee filed its application for exemption from foreign exchange margin under Republic Act No. 2609 with the Governor of the Central Bank of the Philippines on the purchase of \$84,662.40, the dollar value of the redemption proceeds and interests of the RFC 25th Series Bonds in the amount of P255,000.00.

On March 12, 1962, the application for exemption from the margin fee was disapproved by the Exemption Committee of the Central Bank except with respect to the interest on the said 25th Series Bonds amounting to \$1,660.58. The dis-allowance on the principal redemption proceeds was premised upon the ground that the remittance of the same to the home office of the appellee in the United States did not fall within the exemption provision of Republic Act No. 2609.

Prior to the above events, the following were the material incidents. On December 14, 1961, thru the First National City Bank of New York, the sum of \$73,622.36 was remitted to the home office of the appellee at the free market rate plus margin fee in the sum of P33,251.54. This is the amount that is now sought to be recovered. The margin fee is P33,251.54, was collected by the First National City Bank of New York from the appellee on December 14, 1961 and remitted to the central Bank on December 19, 1961.

In due time, the claim for refund was filed with the Court of First Instance of Manila. After hearing judgment was therein rendered declaring the plaintiff-appellee entitled to the refund in the amount of P33,251.54 as well as the costs of the suit. A motion for reconsideration of the said decision having been denied, this petition for review was filed directly to Us on questions of law.

The Central Bank maintains that the redemption proceeds from the RFC 25th Series Bonds could not be exempted

from the margin fee under Republic Act 2609 because said bonds were purchased by the appellee after June 16, 1956 and the exemption could only be extended to purchases as were made prior to June 16, 1956.[1] It rejects the finding of the lower court that since the 25th Series of Bonds were but "proceeds of the original investment of the plaintiff on the RFC bonds made on June 8, 1949," they, the 25th Series Bonds, should be considered as having been acquired on the date the 1st Series Bonds were purchased on June 8, 1949. The Central Bank insists that when the first Series Bonds matured on April 1, 1957 and the appellee agreed to receive therefor not the redemption proceeds but the equivalent amount in 25th Series Bonds instead, the transaction gave rise to a novation of the RFC's original bonded indebtedness on its 1st Series Bonds to the end that for all legal intents and purposes, the 25th Series Bonds ought be deemed as an entirely new purchase.

Under Resolution No. 1281 of the Monetary Board implementing the provisions of Republic Act 2609, the following was exempted from the payment of the margin fee:

"7. The remittance of the redemption proceeds of Government bonds which were purchased by non-residents on or prior to June 16, 1956, in whatever currency paid, and the remittance of interests on Government bonds purchased by or for account of non-residents, under license issued by the Central Bank of the Philippines, on or prior to July 16, 1959, whenever the Central Bank has committed itself to remittance of the interest in dollars."

Against this view, the appellee contends that its acquisition of the 25th Series Bonds could not have given rise to any novation of its original 1st Series Bond-contract with the RFC inasmuch as the said 25th Series Bonds did not involve any new cash outlay on its part, and therefore, could hardly ever been considered as a new purchase. It urges that "the Rehabilitation Finance Corporation merely replaced the RFC 1st Series Bonds x x x with a new evidence of indebtedness in the form of the RFC 25th Series Bonds." It urges that there could not have been any novation in the aforementioned transactions because the incidents involved therein did not fall within any of the three cases which under Article 1291 of the Civil Code[2] would result to a novation. In the premises, it contends that the object of both the 1st and the 25th Series Bonds remained the same, to wit: to provide funds for the rehabilitation of the Philippine economy which had been dislocated and broken as a result of World War II. Besides, there had not been any substitution of debtors nor had there been any subrogation of a third person in the rights of the creditor.

Secondly, the plaintiff-appellee also contends that under the law pursuant to which both the 1st and the 25th Series Bonds were issued, the Government committed itself to return to the investors on the said bonds, the entire amount they may have used in purchasing the same. In other words, the contention is that under Sec. 2(f) of Republic Act No. 85, the law creating the RFC, bonds were guaranteed full return of their investment upon maturity of the same since the said section provides that "The said obligations shall be and are hereby fully unconditionally guaranteed both as to principal and interest by the Government of the Republic of the Philippines and such guarantee shall be expressed on the face thereof." It is now contended that if the margin fee in question were to be imposed on the proceeds of the bonds, there would not anymore be a full return of what it originally invested in the RFC bonds because whereas they originally invested P250,000, they would only be getting back P216,748.46, when the difference shall have gone to the payment of the questioned margin fee.

Lastly, the appellee contends that the fact that the redemption proceeds of the RFC First Series Bonds were retained by the Government, through the RFC, which made further use of said proceeds by reinvesting them in a new issue-the RFC 4% 25th Series Bonds-clearly shows that it is only elementary fair play and simple justice that the advantages and benefits which had accrued to the redemption of the RFC First Series Bonds should not be arbitrarily taken away from the proceeds of the new issue.

The sole issue in this case may, therefore, be resolved into this proposition: Should the RFC 4% 25th Series Bonds be deemed to have novated the contract arising from the purchase of the 1st series Bonds?

We answer the issue in the affirmative and find for the appellant Central Bank.

On the question of novation, We sustain the view of the appellant that the substitution of the 1st Series Bonds with the 25th Series ones gave rise to a novation as to make the subsequent transaction a distinct and completely new purchase. The authorities cited by the Central Bank are applicable to the instant controversy. Thus,

"Substitution of bonds-Surrender of old bonds. If a bondholder gives up his bonds and accepts other securities in their place there is, in the absence of any agreement governing the transaction, a novation of the debt, a payment of the former obligation, and a substitution of the latter. Thus where a large proportion of prior bonds had been exchange for a new issue, the fact that, upon the subsequent sale of the mortgaged property, the remaining prior lien bonds were paid in full, while the bonds of the new issue were not paid in full, was held not sufficient to entitle a holder of the bonds of such new issue, received in exchange for such prior lien bonds, to set aside the exchange and be restored to his former position. When bondholders agree to accept in lieu of bonds held by them other mortgage bonds, to be issued by a re-organization company upon condition that all the holders of the old bonds should agree to such exchange and the ones assenting received the new bonds, at the game time retaining the old one until the assent of all should be obtained, but without such assent being gained, required the trustee of the new issue to foreclose proceedings for non-payment of interest, it was held that this constituted an election to accept the new bonds and surrender the old, and that thereafter they were not entitled to the security of the old bonds." (The Law on Bonds and Bond Securities by Leonard A. Jones, 46h Ed., Vol. 2, pp. 216-217. Italics supplied.)

"It is a universal rule that where a municipality issues new securities and exchange them directly for old ones, or in the payment of a valid existing indebtedness, the transaction is not an increase within the meaning of constitutional and statutory provisions, since the new securities as soon as issued extinguish the old debt x x x." (Supra, Vol. 1, p. 99, citing *Citrus Growers Dev. Assn. vs. Salt River Water Users Assn.*, 34 Ariz, 105, 268 Pac. 773. Italics supplied)

"In the instant case, no evidence has been presented by the appellee that its acquisition of the second series bonds was meant as a mere continuation of the first issue. 'Consequently and upon the above authorities, the 25th Series Bonds must be deemed to have constituted a full payment of the RFC's obligation under the first series bonds.

The claim that the imposition of the margin fee in this instance would result to a breach of the guarantee committed by the law in Sec. 2(f) of Republic Act 85 impresses Us as scantily meritorious. It should be observed that the margin fee is not being imposed upon the proceeds itself of the matured second-series bonds. Rather, it is being collected on the remittance of the said proceeds to the United States. In other words, the Government has not gone back on its word that on the maturity of the 25th Series Bonds, it would return to the plaintiff the entire amount of its investment therein plus the corresponding interest. For the fact is the appellee did receive back the entire investment it made on the said bonds. That it has now to pay a certain fee to be able to remit the said return to its home office abroad is a transaction completely different from and totally independent of the terms governing acquisition of the bonds.

One salient feature of the transaction was that it was expressly provided that the bonds were to be paid in pesos and not dollars. Originally, the plaintiff invested P250,000.00 On the maturity of the bonds, it was given back to it with the corresponding interest.

"Similarly, We must reject the charge that the Government, in levying the fee in dispute, has unduly taken advantage of "the benefits which had accrued to the redemption proceeds of the RFC First Series Bonds." In agreeing to accept the second issue bonds when the first series ones matured, the appellee must be deemed to have agreed to the same conditions as those provided under the First Series Bonds.

FOR ALL THE FOREGOING, the decision appealed from is hereby reversed and set aside and the appellant is absolved from the order of the lower court requiring it to refund to the appellee the sum of P33,251.54. Costa against the appellee in this instance only.

SO ORDERED.

Bengzon, C. J., Bautista Angelo, Concepcion, Barrera, Dizon, Makalintal, Bengzon, J. P., and Zaldivar, JJ. concur.

[1] Sec. 3 of R.A. 2609, so far as material to the present discussion provides: "The provision of this Act shall not apply to the liquidation x x x of contractual obligation . . . outstanding as of the date this Act takes effect and the extension thereof, with the same terms and conditions as the original contractual obligation." R.A. 2609 was approved on July 16, 1959 and took effect thereon.

[2] Art. 1291. Obligations may be modified by:

- Changing their object or principal conditions;
- Substituting the person of the debtor.;
- Subrogating a third person in the rights of the creditor.

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