

CONSOLIDATED TEXTILE MILLS, INC., PLAINTIFF-APPELLANT, VS. REPARATIONS COMMISSION, DEFENDANT-APPELLEE, MABUHAY RUBBER CORPORATION, INTERVENOR.*G.R. No. L-23859. February 22, 1968*

Ponente: ANGELES, J.

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The main issue posed in this appeal is: Whether the rate of exchange to be adopted in fixing the peso cost of reparations goods procured by the Reparations Commission for the applicant-end-user, Consolidated Textile Mills, Inc., should be reckoned on the basis of the rate of exchange of the Philippine peso to the U.S. dollar obtaining at the time the corresponding "Contract to Purchase" the goods was entered into between the applicant and the Reparations Commission in 1961, or on the basis of the prevailing free market rate of exchange between the said currencies at the time of the procurement of the goods in 1963.

In a complaint for declaratory judgment filed by Consolidated Textile Mills, Inc. (referred to hereafter as Consolidated) in the Court of first Instance of Manila, Civil Case No. 54375, against the Reparations Commission (hereafter referred to as the Commission), the plaintiff prayed for judgment declaring that the payment to the defendant Reparations Commission for the goods worth \$3,900,000.00 allocated to it, should be based on the official rate of exchange of 12.00 to \$1.00. The plaintiff was joined in its prayer by Mabuhay Rubber Corporation which, with leave of court, intervened in the action with respect to other reparations goods worth \$1,500,000.00 allocated to it by the Commission under similar circumstances as those of the Consolidated. The Commission contends that the peso cost of the goods in question should be computed on the basis of the free market rate of exchange which was about P4.00 to \$1.00.

In a decision, dated February 22, 1964, the court a quo denied the claims of both the plaintiff and the intervenor, and declared that payments for the goods in question shall be subject to, and be based upon, the free market rate of exchange of the Peso to the dollar as proposed by the Commission.

The antecedents of the case are not controverted. Stripped of unessential details, the evidence of record gives the following account of the environmental facts of the case:

Consolidated was an applicant for reparation goods for which it filed Application No. 0953 with the defendant Commission on March 2, 1961, for one set of integrated textile mill equipment to the amount of \$3,900,000.00. Pursuant to the provisions of Republic Act 1789, otherwise known as the Reparation Law, the application was given due course for consideration by the Commission. The application was recorded as Item No. 6, Category II Private Sector, in the Fifth Reparations Year Tentative Schedule which later became the Sixth Year Schedule because when it was finally concluded with the Japanese Government, the Fifth Reparations Year had already expired. The same item was still later carried over to the Seventh Year Agreed Schedule listed as Item No. 19, Category II Private Sector - Textile Mill Equipment valued at \$3,900,000.00. Implementing the aforesaid allocation, on November 29, 1961, Consolidated and the Commission entered into and executed a "Contract to

Purchase" wherein it is made to appear that a down payment of P390,000.00 was made by Consolidated to the Commission, with a further stipulation that a "Contract of Conditional Purchase and Sale" shall be executed which shall supersede the "Contract to Purchase". As approved by the Commission in its Resolution of December 12, 1961, the procurement of textile machines and equipment for Consolidated, provided for an estimated contract value of THREE MILLION NINE HUNDRED THOUSAND U. S. DOLLARS; and as authorized in said Resolution, the Executive Director and Secretary of the Commission issued the corresponding Procurement Order directed to the Chief of the Reparations Mission in Japan on the following day.

On February 28, 1962, the Office of the President issued a directive addressed to both the Commission and the National Economic Council enjoining further implementation of all items in the Sixth Year Agreed Schedule, except those for small scale industries, pending reexamination of the said items in the light of the new socio economic development program of the new administration. Another directive of the same import was addressed to the Chief of the Reparations Mission in Japan on May 29, 1962. On September 13, 1962, the Commission adopted Resolution No. 692 by virtue of which bids of Japanese suppliers of the machineries and equipment allocated to Consolidated were approved. And in conformity with the then existing requirement of the Commission, Consolidated submitted a guarantee bond in the amount of P1,170,000.00 representing 15% of the total allocation to it in the sum of \$3,900,000.00. The corresponding procurement contracts (with the suppliers) were verified by the General Auditing Office of the Philippines on February 29, 1963, and approved by the Commission on March 1, 1963. The same were verified by the Japanese Government on April 1, 1963, In signed by the Chief of the Reparations Mission in Japan on that same day. These procurement contracts involved a total amount of \$3,357,191.00. The Consolidated having known before hand that the aforesaid procurement contracts did not totally exhaust its allocation of \$3,900,000.00, in its letter dated January 16, 1962, and July 13, 1962, requested the Commission to allow it to make use of the balance of its allocation. The request was granted, and on May 28, 1963, the Commission resolved to authorize the procurement of additional reparations goods for Consolidated in an amount equivalent to its balance of \$542,809.00.

On March 28, 1963, a Presidential Directive signed by the Executive Secretary was issued providing, among others, that the free market rate shall be applied without exception to all items appearing in the Seventh Year Reparations Schedule including those items which had appeared in previous schedules. It was in pursuance of this directive that the Commission required the Consolidated to pay, before delivery of the goods, the difference between the down-payment computed at the rate of P2.00 to \$1.00 and that as computed on the basis of the free market rate of exchange. This demand precipitated a disagreement between the parties.

On July 1, 1963, Consolidated filed a petition for declaratory relief in the Court of First Instance of Manila against the Commission, seeking for a judicial declaration as to the rate of exchange that should be applied to ascertain the peso price of the reparations goods allocated to it. Upon plaintiff's motion, the court issued a writ of preliminary injunction on August 28, 1963, supplemented by another on September 28, 1963 whereby defendant Commission was ordered, among others, to refrain from specifying in the "conditional contract of purchase and sale" to be executed by the parties the peso value of the reparations goods allocated to the plaintiff; the writ further enjoined the defendant Commission from requiring the plaintiff to pay the difference of the 5% down payment based on the free market rate and the amount actually deposited by the latter for the said purpose.

Partial shipments of the reparations goods subject of the procurement contracts aforementioned have since then arrived in the Philippines and delivered to the plaintiff. In accordance with the writ of preliminary injunction issued by the court, on October 4, 1963, the parties Consolidated and the Commission, executed a "Contract of Conditional Purchase and Sale" of the goods covered by the reparations allocation of \$3,900,000.00, without indicating therein the peso value thereof pending the judicial determination of the question regarding the

applicable ex-change rate, which contract is dated October 4, 1963. At the same time, the plaintiff has submitted the corresponding insurance coverage and performance bond based on the value of the goods computed at the current rate of foreign exchange, subject to the condition that the same shall be reduced in the event the court should decide to apply the P2.00 to \$1.00 rate of exchange to the goods allocated to the plaintiff; and the plaintiff likewise agreed to pay in cash all amounts due and payable under the contract computed at the rate of P2.00 to \$1.00 with a bond to cover the amounts in excess thereof demanded by the defendant Commission on the basis of the current rate of exchange.

On February 22, 1964, the Court of First Instance of Manila rendered the decision appealed from which, as stated in the first paragraph of this opinion, sustained the right of the Reparations Commission to apply the current rate of exchange in determining the equivalent peso price to the U. S. dollar of the reparations goods allocated to and procured from Japan for the plaintiff. Plaintiff moved for a reconsideration of the decision by adopting as its own, the Motion for Reconsideration and New Trial filed by the intervenor Mabuhay Rubber Corporation, which the court denied in its order dated July 15, 1964. A second motion for reconsideration dated July 27, 1964, was filed by the intervenor which, was again concurred in and adopted by the plaintiff as its own. But, because the intervenor had thereafter moved for a suspension of the proceedings in connection with its second motion for reconsideration, whereupon, plaintiff withdrew as party to the second motion for reconsideration and filed a notice of appeal. Hence, this appeal by the Consolidated Textile Mills, Inc., from the decision.

This is the appellant's theory: The "Contract to Purchase" the reparations goods in question was concluded at a time (November, 1961) when the rate of exchange obtaining between the peso and the dollar was in the ratio of 2:1, whereas the directive of the President requiring the Reparations Commission to apply the current free market rate of exchange of the peso to the dollar computing the peso cost of reparations goods allocated to it was issued when such rate is about P4.00 to \$1.00. This would increase the cost of the goods by two-fold which - to the mind of the appellant - spells a clear impairment of the obligation under its contract with the Reparations Commission;[1] to apply the directive of the President retroactively to its case would amount to a denial of due process;[2] and with the circumstance that the said directive would be made to apply indiscriminately to all items appearing in the Seventh Year Reparations Schedule without regard to the time the applications were made as appears in previous schedules, it would surely mean, according to the appellant, a total disregard of the principle of equal protection of the law.[3]

For a clear understanding of the issues, we shall reproduce herein the terms of the "contract to purchase" claimed to have been impaired, and the text of the directive of the President that allegedly impairs it.

The "Contract to Purchase" which was executed by the parties on November 29, 1961, reads as follows:

"KNOW ALL MEN BY THESE PRESENTS:

"This CONTRACT, made and executed in the City of Manila, Philippines, this 29 day of November, 1961, by and between:

"The REPARATIONS COMMISSION, a government entity vested with juridical personality to enter into contract, being domiciled at and with head office at the 5th Floor, DBP Bldg. No. 2, Port Area, Manila, Philippines, represented in this instance by Its Chairmen, Rodolfo Maslog, acting for and by authority of the said Commission and hereinafter referred to as the PARTY OF THE FIRST PART,

- and -

"CONSOLIDATED TEXTILE MILLS, INC., a corporation duly organized and existing under the laws of the

Philippines, with head office and business address at Suite 206-214 L & S Bldg., 1414 Dewey Blvd. Manila, represented in this instance by Felix K. Lirag, its authorized representative and hereinafter referred to as the PARTY OF THE SECOND PART,

"WITNESSETH:

"That the PARTY OF THE SECOND PART is an applicant for reparations goods, more particularly described in Application No. 0953, filed with the PARTY OF THE FIRST PART and incorporated herein as an integral part of this contract by way of reference,

"That the PARTY OF THE FIRST PART is giving due course to the aforesaid application of the PARTY OF THE SECOND PART, and in consideration of the same, and for the added consideration of the procurement for and delivery to the PARTY OF THE SECOND PART of the goods and/or services subject of the said application, in whole or in part, the PARTY OF THE SECOND PART HEREBY ENGAGES itself to perform the following:

"a) To make, a down payment to the PART OF THE FIRST PART for the project applied for which shall not be less than 2% of the value of the project if it does not exceed P50,000 and 5% of the value if the project exceeds P50,000. (PARTY OF THE SECOND PART has paid under O. R. No. 0125246, dated November 29, 1961, the amount of P390,000.00 by way of down payment);

"b) That no procurement order will be issued until and unless this contract is signed by the PARTY OF THE SECOND PART and the down payment here-in required is actually paid and other requirements of law are complied with;

"c) That upon his failure to pay the down payment, said application shall be deemed cancelled or withdrawn and, as a further penalty for such failure, no other application shall likewise be accepted by the PARTY OF THE FIRST PART;

"d) To take delivery of the goods applied for when procured, immediately upon arrival in the Philippines and to inspect the goods upon delivery to ascertain whether or not they are in accordance with the approved plans and specifications and if not, to file the corresponding claim against the supplier;

"e) That if he fails to take delivery, or backs out from the procurement of the reparations goods when the same are already in the process of manufacture, he shall forfeit his down payment and he shall also be barred from subsequently applying for reparation goods;

"f) That after the issuance of the procurement order and before the verification of the Procurement Contract by the PART OF THE FIRST PART, the PARTY OF THE SECOND PART shall deposit with the PARTY OF THE FIRST PART the approximate value of all necessary costs and charges incident to the application for, and the procurement, production, delivery and acquisition of, the goods concerned;

"g) To enter into a Contract of Conditional Purchase and Sale with the PARTY OF THE FIRST PART for the goods accordingly procured, and when said Contract of Conditional Purchase and Sale is thus executed, same shall supersede the instant Contract to Purchase;

"That the parties to this contract further covenant and agree that this contract shall be automatically cancelled and inoperative if the goods applied for is not actually procured by reason of any fortuitous circumstance.

"IN WITNESS WHEREOF, the parties have hereunto set their hands this 29 day of November, 1961, in the City of Manila, Philippines."

On the other hand, the directive of the Office of the President to the Chairman of the Reparations Commission on March 28, 1963, which is claimed by the appellant to have impaired its contractual rights under the foregoing contract, is as follows:

"Sir:

"This has reference to your letter dated November 26, 1962 requesting clarification regarding the imposition of the free market rate on items to be procured by the Reparations Commission.

"The following rules shall govern:

1. The free market rate shall be applied without exception to all items appearing in the Seventh Year Schedule, including those items which had appeared in previous schedules.

"2. The previous exchange rate shall be applied to those items in previous schedules, but not carried over in the Seventh Year Schedule, even if the contract of conditional purchase and sale has not yet been signed.

"Our letter of October 9, 1962 (last paragraph), as clarified by the above rules, shall be considered as a directive for all intents and purposes."

Appellant contends that from the time it filed its application in 1961 for the aforesaid reparations goods up to the time the corresponding Procurement Contracts for the same goods were approved by the Commission in 1963, it was expressly understood and agreed by both parties that the official rate of exchange of P2.00 for \$1.00 would be the measure of its obligation under the "Contract to Purchase" earlier quoted. It specifically points out the fact that the Commission had required it to make down payment of P390,000.00 and to post a guarantee bond in the amount of P1,170,000.00, representing 5% and 15%, respectively, of the estimated contract value of its \$3,900,000.00 allocation as computed at the exchange rate of P2.00 to \$1.00. It argues, therefore, that to apply the current free market rate of exchange of the peso to the dollar to its case as directed by the Office of the President and imposed upon it by the Commission - thereby increasing by about two (2) times the peso cost of the reparations goods allocated to it - would clearly impair the obligation it has assumed under the "contract to purchase" aforequoted.

The gravamen of appellant's contention is anchored on the proposition that under the "contract to purchase" earlier quote, the Commission is under obligation to procure, sell and deliver the goods, which said appellant had requisitioned or applied for at the rate of P2.00 for every \$1.00 of the procurement cost of said reparations item. In a word, appellant holds the view that the said "contract to purchase" is a bilateral promise to buy and sell at the rate of P2.00 to \$1.00 and is as good as a perfected sale. In this posture, therefore, it argues with vehemence that the appellee Commission cannot unilaterally alter the consideration of the perfected sale by applying a rate of exchange which was not agreed upon, nor contemplated by the parties when they executed the aforesaid "contract to purchase". Unfortunately, however, an examination of that "contract to purchase" does not support appellant's assumption and contention. On the contrary, it reveals all the earmarks of a mere preliminary agreement. Admittedly, both the objects to be procured and the price to be paid were not specifically described therein. It is likewise significant to note that in the "contract to purchase" there is no stipulation as to what rate of exchange should govern in the determination of the peso equivalent of the dollar value of the reparations to be procured thereunder. It is, we hold, obvious from the face of the agreement that it does not contain, and was not intended to contain, all of the important terms and conditions of future contract. It was really incomplete, for it left out material terms thereof for future determination. Hence, it was indeed necessary that the parties should, as they did stipulation the very same "contract to purchase" relied upon heavily by the appellant, that before the delivery of the goods, a contract of conditional purchase and sale shall be executed by the parties to the agreement which shall supersede the said contract to purchase.

"The instrument sued on is what is known as an agreement to make an agreement. Such agreements are usually pro-visional or temporary; it being the in-tention of the parties at some later date to set out in a more formal way the terms and conditions of the pro-posed agreement. If all the conditions of the postponed agreement are speci-fied in such agreement, it is an agreement praesenti. (McKell v. Chesapeake & Ohio Ry. Co., 175 Fed. 321, 91 C. C. A. 109, 20 Ann. Cas. 1097.) But where the conditions of the deferred contract are not set out in the provisional one, or where material conditions are omit-ted, it is not a contract in praesenti, because the minds have not met and may never meet." [4]

With this authority in mind, and considering the sur-rounding circumstances of the of case already stated, it is our considered opinion that the Secretary of Just-ice was right, clod the court below did not err, in holding that "existing contracts to purchase repara-tions goods are, at best, preliminary agreements which do not definitely stipulate try contract price; nor do they carry any provision as to the rate to be used for the conversion into pesos of the dollar value of the reparations goods."

Even from the standpoint that the "contract to purchase" is a perfected contract between the parties, as contended by the appellant, it can only be so with respect to the rights and obligations therein stipula-ted and agreed upon by the parties. We find that the Commission had assumed under the "contract to purchase" the obligation to give due course to appellant's appli-cation for the goods in question and to procure and deliver the same after appellant shall have executed a contract of conditional purchase and sale of the goods accordingly procured which, may be in whole or in part of the item specified in the procurement order. Before the contemplated contract of conditional purchase and sale may be executed, certain essential points must necessarily be threshed out first between them, as the terms of payment, and the rate of exchange to be used in determining the peso cost of the goods over which the minds of the parties may or may not meet. And since the parties made no mention whatsoever in the "contract of purchase" about the rate of exchange to be adopted in fixing the peso cost of the goods, it becomes necessary that a final contract of conditional purchase and sale be subsequently executed by them be-fore delivery of the goods wherein the dollar price of the goods may be reduced into its peso equivalent.

But it is pointed out by the appellant that in the "contract to purchase" under consideration, it was required and made to pay a down payment of P390, 000.00, and that thereafter, it was again made to put a guarantee bond in the amount of P1,170,000.00. Ap-pellant therefore contends that since these amounts correspond to 5% and 15%, respectively, of the \$3,900,000.00 contract value of the reparations goods it has applied for as required it the existing rules and re-gulations of the Commission, and were arrived at by using the then prevailing P2.00 to \$1.00 rate of ex-change, it may reasonably be inferred therefrom that the parties intended are understood that the same ra-tio (2:1) of the peso to the dollar would be used in ascertaining peso price of the goods after the same shall have been subsequently procured from Japan. Hence its insistence that rate exchange may no longer be altered or change in conditional purchase and sale to be executed by the parties before the delivery of the contention should be denied. From the fact alone that the exchange rate of P2.00 to P1.00 had been used in the computation of the above-mentioned amounts of down payments and guarantee bond as required in the then regulations of the Reparations Commission, is cannot be lightly inferred that the parties bound themselves to use the same rate of exchange in all their future dealings relative to the same goods. The parties could have so provided the same in the contract had they wanted to, which they did not. And certainly, we cannot write something into the "contract to purchase" and make its provisions cover points not expressly stipulated therein, such as the conversion rate of the peso to the dollar to be used to determine the equivalent in Philippine pesos of the dollar price of the goods which, at the time the said "contract to purchase" was entered into, had not even then been definitely ascertained. It logic-ally follows, therefore, that the circumstances point-ed out by the appellant can not be determinative of the question regarding rate of exchange that should govern the transaction in question.

An examination of the evidence of record reveals that the appellant stated the value of the goods in its application

filed with the Reparations Commission as \$3,904,915.42; and the Reparations Commission had referred to the cost of the goods in dollars only in all, its subsequent actions on the said application. Thus, when the Commission approved the application on December 12, 1961, it "resolved to approve the procurement of textile machineries and equipment for Consolidated Textile Mills, Inc at the estimated contract value of the U. S. dollars THREE MILLION NINE HUNDRED THOUSAND (\$3,900,000.00)". The same amount of \$3,900,000.00 appears in the procurement order for the goods issued by the Reparations Commission on the following day, addressed to the Chief of the Reparations Mission in Japan. Biddings were subsequently conducted in Japan for the supply of the goods, as a result of which the Philippine and Japanese Governments approved the procurement contracts involving a total amount of \$3,357,191.00. And thereafter, herein appellant applied for additional equipments is the sum of \$542,809.00 to make use of the balance of the \$3,900,000.00 previously allocated to it. It is therefore, clear that the goods in question were acquired by the Reparations Commission for herein appellant in the amount of \$3,900,000.00.

"Contracts which are by their terms payable in foreign money, if they are enforced in the United States, must be paid in United States money equivalent, according to the acts of Congress, to the amount stipulated in the contract. It has been held, however, that the exchange of currency or the rate of exchange determines the purchasing power or the equivalent of the currency of one country as measured by or in the currency of another. As the rate which normally affects business transactions fluctuates from day to day, it is more commonly expressed as the current rate of exchange; but when the rate is established by contract or otherwise, it is a fixed rate and controls all matters within the scope of its operation." [5]

From the foregoing circumstances, and in the light of the authority just quoted, it is seen that the real value of the reparations goods procured for herein appellant is \$3,900,000.00 which should be the basis of the peso value of said goods to be specified in the contract of conditional purchase and sale entered into between the parties. The sum of \$3,900,000.00 is the amount the Reparations Commission is supposed to pay to the Japanese suppliers of the goods. The appellant may not expect the Reparations Commission to part with the goods for any amount less than what it will actually pay, or is supposed to pay therefor in Japan, in the same way that the Reparations Commission cannot compel herein appellant to pay more than the value of the goods. This being so, and considering the failure of the parties to stipulate in the "contract to purchase" the rate of exchange to be used in determining the peso value or cost of the said goods, it would surely be fair and just, and in keeping with the substance of the obligation that herein appellant should pay for the goods in its equivalent peso cost based on the free market rate of exchange of the peso to the dollar at the time of the procurement in Japan. Neither would the circumstance that by so applying the current rate of exchange obtaining at the time of procurement, the acquisition cost of machine-ries as reflected in its original project studies would be doubled, carry the day for herein appellant. The fact still remains that the Reparations Commission would not be unjustly enriched thereby at appellant's expense for the reason that what appellant would pay would only be equal to what the Reparations Commission is supposed to pay for the goods to the Japanese suppliers.

In fine, it is the opinion of the Court, that whether the "contract to purchase" be treated as a mere preliminary agreement of the parties, or as a perfected contract which bound the Reparations Commission to procure and then sell the goods, and herein appellant to purchase the said goods, we have arrived at the same conclusion - that for the failure of the agreement to specify therein the rate of exchange to be adopted in computing the dollar value of the goods to its peso equivalent - the adoption of the free market rate by the Reparations Commission to ascertain the peso cost of the goods would not spell impairment of any obligation thereunder. Consequently, we do not find it necessary to dwell at length on the discussion of the principle of non-impairment of obligation so elaborately expounded by appellant in its brief; and so, with the alleged denial of due process and equal protection of the laws.

WHEREFORE, AND CONSIDERING ALL THE FOREGOING, the decision of the trial court is affirmed. On equitable considerations, no pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Sanchez, and Ruiz Castro, JJ., concur.

[1] First Assignment of Error.

[2] Second Assignment of Error.

[3] Third Assignment of Error.

[4] *Peer v Hughes*, 25 Ariz. 105, 213 P. 691. See also the holdings in the following cases which are of similar import: *Griffin Grocery Co. v. Kingfisher Mill & Electric Co.* 168 Okla. 157, 32 (2d) 63; *Hi-way Moto Co. v. Service Motor Co.* 68 Utah 65, 249 P. 133; *Owens v. Wilson*, 135 Okla. 38, 273. P. 895.

[5] 36 Am. Jur. 471.

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