

MATHEW S. TEE, PLAINTIFF AND APPELLANT, VS. TACLOBAN ELECTRIC AND ICE PLANT CO., INC., CHAN BUN CHIT AND VICTORIANO CHAN, DEFENDANTS AND APPELLEES.

G. R. No. L-11980. February 14, 1959

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Plaintiff Mathew S. Tee seeks to recover, from defendants Tacloban Electric and Ice Plant Co., Inc., Victoriano Chan and Chan Bun Chit, the amount of P48,700 representing ten (10%) per cent of a \$243,500 allocation allegedly secured by said plaintiff from the Central Bank of the Philippines— in addition to the sum of P10,000, by way of expenses of litigation and attorney's fees, with costs against said defendants. In paragraphs 2, 3, 4 and 5 of his complaint plaintiff alleges that:

"2. On or about August, 1955, defendant Tacloban Electric and Ice Plant Co., Inc., acting through defendants Chan Bun Chit and Victoriano Chan, approached plaintiff and, informing him that they needed foreign exchange allocation for the purchase of machineries and other supplies for the expansion of the Tacloban Electric and Ice Plant Co., Inc., they requested plaintiff to prepare, file and work for the approval of the application for the said foreign exchange, knowing plaintiff had much experience therein, and promising to pay plaintiff the usual fee for his work, to which plaintiff agreed.

"3. In compliance with the said agreement, plaintiff worked for a period of six (6) months, more or less, accomplishing papers, filing them and following up the papers in the different government offices to which they were referred in order to obtain the necessary foreign exchange allocation, as a result of which the Central Bank granted an allocation of (\$243,500.00) two hundred forty-three THOUSAND FIVE HUNDRED DOLLARS;

"4. The usual, standard fee for the services performed by plaintiff is ten per centum (10%) of the value of the allocation obtained, which in this case amounts to (P48,700.00) FORTY-EIGHT THOUSAND SEVEN HUNDRED PESOS;

"5. Plaintiff has demanded payment from defendants, but the latter have failed and refused, without justifiable cause, to comply with plaintiff's demands."

Defendants filed separate motions to dismiss, predicated upon the ground, among others, that the contract referred to in the complaint is null and void ab initio. After appropriate proceedings, the Court of First Instance of Manila granted these motions and dismissed the case. Hence, this appeal by plaintiff, who maintains that:

"1. The trial court erred in dismissing plaintiff's complaint, without requiring defendants to answer or hearing plaintiff's evidence, on the ground that plaintiff's demand for compensation for the services he had rendered in preparing and working for the approval of defendants' application for foreign exchange is 'unenforceable under the statute of frauds' because 'of the denials of defendants to recognize that said services have been rendered in their favor and benefit'. (Resolution, Record on Appeal, p. 120.)

"2. The trial court further erred in ruling, without giving plaintiff an opportunity to present his evidence, and despite the allegations of plaintiff's complaint to the contrary, that 'it was not he (plaintiff) who had obtained the dollar allocation for the defendants' (Record on Appeal, pp. 121-122), and for that reason, dismissing his

complaint.

"3. The trial court likewise erred in dismissing plaintiff's complaint on the ground that the aforesaid contract 'is invalid and void' because it is 'contrary to law and public morals' (Record on Appeal, p. 121).

"4. The trial court finally erred in dismissing the complaint as to defendants Victoriano Chan and Chan Bun Chit, on the ground that they acted merely 'as intermediaries or attorney in fact of the defendant Tacloban Electric and Ice Plant, Inc., and, at the same time, dismissing the complaint as to the defendant Tacloban Electric & Ice Plant, Inc. because it could not be held liable for the acts of an agent or intermediary (Record on Appeal, pp. 122-123)."

The main issue in this case is the validity of the contract relied upon in the complaint. The lower court pronounced it void in the following language:

"It is gleaned from the above cited paragraphs of the complaint that a contract of agency existed between plaintiff and defendants. Such contract being contrary to law and public morals same is invalid and void and could not therefore be enforced against defendants. Article 1409 of the Civil Code prohibits such contract and Section 14 of the Central Bank Charter and Act 265 of the Republic prohibit and punish any person except the interested party to work for and in behalf of the party interested to obtain dollar allocation's approval. Consequently, the claim of plaintiff being not only prohibited by law for being against public policy and morals but likewise punishable by the same legal provisions, said claim is void and unenforceable." (Record on Appeal, 121.)

We are fully in agreement with this view. According to plaintiff's complaint, he agreed "to prepare, file and work for, the approval of the application" for foreign exchange of the Tacloban Electric & Ice Plant Co., Inc., and "in compliance" with said agreement, he "worked for", and secured the corresponding allocation, "accomplishing the papers, filing them, and following up the papers in the different government offices to which they were referred."

Section 3 of Article IV of Central Bank Circular No. 44, provides:

"Authorized Agent Banks are hereby instructed to inform their clients that under no circumstances should any applicant, his agent or other representatives, follow up an application with the Central Bank or the Bankers Committee. All information concerning applications, including actions taken thereon by the Monetary Board or the Bankers' Committee, shall be communicated to the applicants by their respective Authorized Agent Banks." (*Italics ours.*)

Pursuant to this circular, all applications for foreign exchange shall be made through authorized agent banks, which are the only parties authorized to deal with the Central Bank or the Bankers Committee in connection therewith. Consistently with this scheme, plan or pattern, the circular declares that, "under no circumstances should any applicant, his agent, and representatives follow up an application with the Central Bank." Plaintiff's alleged contract to work for the approval of the foreign exchange application in question and the services he claims to have performed in pursuance of this contract, "following up the papers in the different government offices to which they were referred"—one of which is the Central Bank—are inconsistent with the law (Republic Act No. 265, as amended) creating the Central Bank" upon the authority of which the circular above mentioned was issued—and, hence, contrary to the public policy thus adopted. In short, said contract is "in-existent and void from the beginning." (Article 1409 (1), Civil Code of the Philippines).

Besides, the agreement under consideration is contrary to good customs and public order, for public interest demands that applications for foreign exchange be considered, acted upon and disposed of strictly on the basis of the merits and demerits of each case. In other words, the exigencies of public welfare require that the proceedings for the determination of said applications be conducted in the most impersonal and impartial manner to forestall favoritism or the commission of other irregularities in relation thereto, or, at least, to minimize the opportunities therefor or the possibility thereof—which is, evidently, the purpose of the aforementioned circular, requiring that

all applications for foreign exchange be filed with agent banks and that all representations relative thereto be made, not by the "applicant, his agent or other representative", but through said agent banks.

"El orden publico, que no signified aqui el material mantenimiento de la paz publica, represents, el interes publico, social y de ley en el derecho privado, lo permanente y esencial de las instituckmes, lo que, aun favoreciendo a algun individuo en quien se concreta al derecho, no puede quedar a su arbitrio." (Manresa, 5.a ed, Tomo VIII, Volumen II, p. 289.)

"Sec. 167. Generally.— * * * It is a general rule that agreements against public policy ,are illegal and void. Under the principles relating to the doctrine of public policy, as applied to the law of contracts, courts of justice will not recognize or uphold any transaction which, in its object, operation, or tendency, is calculated to be prejudicial to the public welfare, to sound morality, or to civic honesty. The test is whether the parties have stipulated for something inhibited by the law or inimical to, or inconsistent with, the public welfare. An agreement is against public policy if it is injurious to the interests of the public, contravenes some established interest of society, violates some public statute, is against good morals, tends to interfere with the public welfare or safety, or as it is sometimes put, if it is at war with the interests of society and is in conflict with the morals of the time. An agreement either to do anything which, or not to do anything the omission of which, is in any degree, clearly injurious to the public and an agreement of such a nature that it cannot be carried into execution without reaching beyond the parties and exercising an injurious influence over the community at large are against public policy. There are many things which the law does not prohibit, in the sense of attaching penalties, but which are so mischievous in their nature and tendency that on grounds of public policy they cannot be admitted as the subject of a valid contract. The question whether a contract is against public policy depends upon its purpose and tendency, and not upon the fact that no harm results from it. In other words, all agreements the purpose of which is to create a situation which tends to operate to the detriment of the public interest are against public policy and void, whether in the particular case the purpose of the agreement is or is not effectuated. For a particular undertaking to be against public policy actual injury need not be shown; it is enough if the potentialities for harm are present. * * *" (12 Am. Jr., pp. 663-664.)

The foregoing conclusion renders a determination of the other issues raised in the appeal unnecessary.

Wherefore, the resolution appealed from is hereby affirmed, with costs against plaintiff-appellant. Let the Solicitor General be furnished a certified copy of this decision for such action, if any, as may be appropriate under pertinent laws. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

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