

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. JOSE C. ZULUETA, DEFENDANT AND APPELLEE.*G.R. No. L-7271. August 30, 1957*

Ponente: BENGZON, J.

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In the Manila court of first instance, the Philippine National Bank sued the defendant upon a letter of credit and a draft for the amount of \$14,449.15. Although willing to pay the equivalent in pesos of the draft, plus bank charges, the defendant objected to the 17% excise tax imposed by Republic Act No. 601 which the Bank tried to collect. Both documents, he contended, had been issued and had matured before the approval of said Act, therefore the excise tax should not "be charged.

After trial, the court rendered judgment exempting defendant from the 17% excise tax; but ordered him to deliver to plaintiff the sum of P37,622.11 plus daily interest of P3.9938 on P29,154.55 beginning from January 9, 1953.

The plaintiff appealed, insisting on the right to collect 17% excise or exchange tax. This is the only issue between the parties now.

For a statement of the facts we may quote from plaintiff's brief. "On October 26, 1948, Defendant-Appellee applied for a commercial letter of credit with Plaintiff-Appellant, Philippine National Bank (Manila) and was granted L/C No. 36171 (Exhibit "B") on November 6, 1948, in favor of Otis Elevator Co., 260 Eleventh Avenue, New York City, U.S.A., for \$14,449.15 for the purchase of an electric passenger elevator; on May 17, 1949, and under the said letter of credit (Exhibit "B"), Otis Elevator Co. drew a 90 day sight draft for \$14,449.15 (Exhibit "A") which draft was duly presented to and accepted by Defendant-Appellee on July 6, 1949. Said acceptance matured on October 4, 1949. Upon Defendant-Appellee's signing a 90 day trust receipt (Exhibit "C") on June 3, 1949, Plaintiff-Appellant released to Defendant-Appellee the covering documents of the shipment. In the meantime, debit advice (Exhibit "G") was received from Plaintiff-Appellant's New York Agency to the effect that it advanced or paid the draft (Exhibit "A") to Otis Elevator Co. on May 17, 1949, and charged Plaintiff-Appellant the sum of \$14,467.21 representing the face value of the draft (Exhibit "A") plus \$18.06 as 1/8 of 1% commission. After the maturity date (October 4, 1949) Plaintiff-Appellant presented the draft to Defendant-Appellee for payment but the latter failed, neglected and refused to pay.

During its special session in January, 1951, Congress passed House Bill No. 1513, now Republic Act No. 601, approved on March 28, 1951, imposing a 17% special excise tax (otherwise known as foreign exchange tax) on the value in Philippine peso of foreign exchange sold by the Central Bank of the Philippines or its authorized agents. Plaintiff-appellant, as any other commercial bank in the Philippines, is an authorized agent of the Central Bank of the Philippines.

On October 17, 1952, and January 18, 1958, Plaintiff- Appellant sent bills or statements of collection (Exhibits "D" and "D-I") to Defendant-Appellee but the latter failed and refused to effect payment thereof. In those statements, the sum of P4,955.74 was included representing the 17% special excise tax on the peso value of the

draft for US \$14,449.15 (Exhibit "A"), * * *."

Defendant's application for a letter of credit partly read as follows:

"Please arrange by cable for the establishment of an Irrevocable Letter of Credit on New York in favor of Otis Elevator Co., 260 Eleventh Avenue, New York City for account of Hon. Jose C. Zulueta for the sum of fourteen thousand four hundred FORTY- NINE AND 15/100 (\$14,449.15) DOLLARS against drawn at NINETY DAYS accompanied by shipping documents covering of ONE COMPLETE ELECTRIC PASSENGER ELEVATOR * * *

Drafts must be drawn and presented or negotiated not later than May 31, 1949.

IN CONSIDERATION THEREOF, I/we promise and agree to pay you at maturity in Philippine Currency, the equivalent of the above amount or such portion thereof as may be drawn or paid upon the faith of said credit, together with your usual charges, and I/we authorize you and your respective correspondents to pay or to accept drafts under this credit, * * *"

And the draft issued thereunder (Exhibit A) was negotiable and addressed to herein defendant as the drawee.

From plaintiff's statement of its position it is not clear whether recovery is demanded upon the letter of credit, or upon the draft Exhibit A. Plaintiff may, undoubtedly, proceed on either cause of action. (See Art. 571 Code of Commerce; Sec. 51 Negotiable Instruments Law.)

Had the plaintiff elected to recover on said letter of credit, then it would meet with the doctrines in *Araneta vs. Philippine National Bank*, 95 Phil., 160, 50 Off. Gaz., (11) 5350), According to the majority opinion in that case, plaintiff should receive the equivalent in pesos, on May 17, 1949, of what the New York Agency paid to Otis Elevator, i.e. \$14,467.21. (plus bank fees of course.) According to the minority opinion, the equivalent in pesos of the same amount of dollars on October 4, 1949. No. 17% tax on both dates. In converting dollars into pesos, no 17% exchange tax would be imposable, since it was created only in March 1951. The plaintiff knows the case, for it was a party to it; and anticipating, in this appeal, the obvious conclusions, it insists not so much on the letter of credit, as on the bill of exchange Exhibit A[1]. As stated before, such draft was drawn by Otis Elevator Co. in New York. It was addressed to defendant as drawee, who is due course accepted it. There is no question that upon accepting it, defendant became a party primarily liable[2]; and the holder (Philippine National Bank) may sue him, even if there had been no presentation for payment on the day of maturity. (Sec. 70 Negotiable Instruments Law.)

Admittedly, defendant's responsibility is for \$14,449.15 due in Manila on October 4, 1949 (plus bank fees). He is under obligation to deliver such amount in pesos as were the equivalent of \$14,449.15. At what rate of exchange? The rate prevailing on the day of issuance, day of acceptance, day of maturity, the day suit is filed, or that prevailing on the day judgment is rendered requiring him to pay? Herein lies the center of the controversy. Appellant will win this appeal only if the rate on the last two days above mentioned is held to be the legal rate.

The document is negotiable and is governed by the Negotiable Instruments Law. But this statute does not contain any express provision on the question. We know the draft is a foreign bill of exchange, because, drawn in New York, it is payable here. (Sec. 129 Negotiable Instruments Law.) We also know that although the amount payable is expressed in dollars-not current money here—it is still negotiable, for it may be discharged with pesos of equivalent amount[3]. The problem arises when we try to determine the "equivalent amount", because the rate of exchange fluctuates from day to day.

There are decisions in America to the effect that, "the rate of exchange in effect at the time the bill should have been paid" controls. (11 C.J.S. p. 264.)

Such decisions agree with the provisions of the Bills of Exchange Act of England [4] and could be taken as enunciating the correct principle, inasmuch as our Negotiable Instruments Law, practically copied the American Uniform Negotiable Instruments Law which in turn was based largely on the Bills of Exchange Act of England of 1882. In fact we practically followed this rule in *Westminster Bank vs. K. Nassoor*, 58 Phil. 855.

There is one decision applying the rate of exchange at the time judgment is entered. (11 C. J. S. p. 264.)[5]

This decision however seems not to have taken into account the Bills of Exchange Act above-mentioned. And we have rejected its view in the *Westminster* case, *supra*. Furthermore it related to a bill expressly made payable in a foreign currency—which is not the case here. And the theory would probably produce undesirable effects upon commercial documents, for it would make the amount uncertain, the parties to the bill not being able to foresee the day judgment would be rendered [6].

But, the appellant argues, the defendant had promised to pay \$14,419.15 in dollars; therefore he must be ordered to pay the sum in dollars at current rates plus 17%.

The argument rests on a wrong premise. Defendant had not promised to pay in dollars. He agreed to pay the equivalent of 14,419.15 dollars, in Philippine currency [7].

But if we admit that defendant had agreed to pay in dollars, then we have to apply Republic Act No. 529 and say that his obligation "shall be discharged in Philippine currency measured at the prevailing rates of exchange at the time the obligation was incurred."

Now then, Zulueta's obligation having been incurred[8] before the creation of the 17% tax, it may not be validly burdened with such tax, because the law imposing it could not be deemed to have impaired obligations already existing at the time of its approval.

The plaintiff's theory seems to be that in remitting dollars to its New York Agency, after it collects from defendant, it has to pay for the said excise tax.[9] The trial judge expressed the belief that such amount had been remitted before the enactment of Republic Act 601, because considering the practice of banks of replenishing their agencies abroad with necessary funds, he deemed it improbable that the Manila Office of the Bank—in two years—had not reimbursed its New York Agency for the amount advanced on account of the draft Exhibit A. This belief most probably accorded with reality; because as early as May 17, 1949 (Exhibit G) the New York Agency had "charged" the amount of this draft against the account of the Manila office there,—which means the Agency had reimbursed itself the amount of the draft out of the funds of the Manila Office then in its possession (in New York) or coming to its possession afterwards. And it is unbelievable that in two years the Manila office never had in New York sufficient funds to effect the reimbursement.

In fact, the statement of account rendered by plaintiff to defendant on October 17, 1952, (Exhibit D) enumerated these charges:

"To your acceptance amounting to

\$14,449.15

Plus: Remitter's Commission

18.06

Converted at 3/4 %

\$14,567.21

P29,151.43

5% int. 5/17/49-10/19/52-1251 da.

4,995.68

P34,147.11

10% comm. on \$14,449.15

2,911.51

Documentary stamps

8.70

Air Mail

2.00

17% Excise Tax on P29,151.43

4,955.74

Other charges

3.00"

From the above it may be deduced that the amount of the draft had been remitted or paid to the New York Agency in May 1949, for the reason that Zulueta is charged with remitter's commission" and 5% interest on the amount of the draft (and such commission) beginning from May 17, 1949. This necessarily implies that in accordance with Exhibit G, the New York Agency had been reimbursed of the draft's amount (or such amount was remitted) on May 17, 1949.[10] Now, in May 1949 no 17% exchange tax was payable upon such remittance; and the Manila office did not pay it. Therefore Zulueta should not pay it too.

In view of the foregoing the judgment will be affirmed, with costs against appellant. So ordered.

Paras, C. J., Padilla, Montemayor, and Bautista, Angelo, JJ., concur.

[1] Yet it is charging defendant interest on tile amount beginning from May 17, 1949 i. e., from the time the New York Agency advanced money on the draft. If recovery were based on the draft, interest should run only from the day following its maturity i. e. on October 5, 1949.

[2]See. 62 Negotiable Instruments Law. Union Guarantee vs. Jing Kee, 44 Phil. 533.

[3] Hogue vs. Williamson, 22 S.W. Rep p. 580.

[4] 72. Rules Where Laws Conflict. * * * (4) Where a bill is drawn out of but payable in the United Kingdom and the sura payable is not expressed in the currency of the United Kingdom the amount shall, in the absence of some express stipulation, be calculated according- to the rate of exchange for sight drafts at the place of payment on Che day the bill in payable. (*Italics ours.*)

[5] Liberty National Bank vs. Burr, 270 B'ed. 251.

[6] Amount payable on negotiable instrument should be certain or ascertainable.

[7] See Hogue vs. Williamson, *supra*.

[8] "Incurred" may mean either the day he accepted the draft or the day such draft matured; we need not decide. Certainly it does not mean the day of judgment.

[9] If, as we assume in this part of the decision, the suit is on the draft, the drawee has nothing to do with such remission to New York. His duty is only to pay the holder. What the latter does with the money, is jione of his business. Now, if plaintiff should point to the letter of credit which gave rise to the draft, then it will be bound by our views in the Araneta case, *supra*.

[10] Interest on the cost of remission may be collected only after the Manila Office had remitted.

CONCURRING

REYES, A., J.,

Plaintiff in this case seeks reimbursement in Philippine currency for the amount in dollars advanced by it through its New York agency to meet a draft drawn against defendant and accepted by the latter for a valuable consideration. Plaintiffs right to such reimbursement is not questioned. What is disputed is its pretended right to add to the amount of the draft the excise tax of 17% which plaintiff would have to pay to the Government if it were to remit now to New York the necessary amount of dollars that its agency there had paid on the draft.

I cannot bring myself to believe that it is only now that plaintiff has thought of sending dollars to New York to replace the amount advanced by its agency. As intimated in the majority opinion and in consonance with good banking practice, the necessary remittance must have been effected long ago, that is, long before the creation of the excise tax on foreign exchange in March, 1951. Plaintiff, therefore, could not have paid such tax, and not having done so it has no right to get reimbursement therefor from defendant.

I do not think that defendant could be legally made to pay more than what plaintiff had actually advanced for him, aside from commission and other charges, on the theory that the Philippine peso has depreciated in value with respect to the American dollar. Legally, it has not. The legal rate of exchange between the two currencies is still two to one. What happened is that with the creation of the excise tax in 1951, it would now be more costly to remit dollars abroad. But why should plaintiff make that remittance now when, as already stated, it must have already done so long before the creation of the excise tax on foreign exchange?

Lastly, a debtor cannot be charged with bad faith for refusing to pay that which he should not pay.

CONCURRING

FELIX, J.,

The decision rendered in this case, penned by Mr. Justice Cesar Bengzon, perfectly reflects and delivers the opinion of the majority of this Court and I subscribe to each and every statement made and argument adduced therein. This being so, it would seem that any concurring or supporting opinion is quite superfluous and I would not have taken the task of writing further in the matter were it not for the fact that in the dissenting opinion it is stated that:

"It cannot be justly contended that if a debtor had borrowed, say \$10,000, the lender should be satisfied with eight or nine thousand. Yet that is what the majority's decision actually amounts to".

The writer further says that:

"the majority opinion has the merit of giving the bank a costly lesson on the advantages of not considering political influence in the making and collecting of its loans; but I am afraid the experience will be too quickly forgotten to even palliate the sacrifice of fundamental justice to technical considerations".

I, certainly, cannot leave these statements pass unanswered.

To begin with, I might say that if any lesson has been given by the majority of this Court to the plaintiff bank, it is not in this case but in the case of *Araneta vs. The Philippine National Bank* (G. R. No. L-4633, May 31, 1954), cited in the majority decision, where the latter was a party to that case and a similar doctrine was laid down. Coming now to the bone of contention, I notice that the dissenting Justice views the matter involved in the controversy as a loan and submits that the question really at issue can be boiled down to the proposition of "whether it is the lender or the borrower who should bear the added cost of the depreciation of the peso in relation to the dollar".

In this connection, I might say that defendant's obligation to the plaintiff would have been settled some years ago were it not for the fact that the Bank insisted in collecting the special excise tax of 17 per cent on foreign exchange transactions imposed by Republic Act No. 601 which entered into effect on March 28, 1951, and was not yet in force at the time the obligation of the defendant matured on October 4, 1948. And even if we look at the case as a loan and apply to the transaction the provisions of Article 312, paragraph 1, of the Code of Commerce, cited by the dissenting Justice, yet We could not, under the facts and circumstances of the case that cannot be denied, logically arrive at the same conclusion that lie has come to.

And the reason is obvious. In the first place, We have to take into account that the New York agency of Philippine National Bank and its central office in Manila are not separate and independent entities. That is why it is the Philippine National Bank (Manila office) and not the New York agency of said Bank that is the plaintiff in this case. Consequently, any payment made to plaintiff's central office in Manila for obligations that any debtor may have contracted with said New York agency is and has to be considered as a payment or settlement of said obligations, there being no need to attain this result that the plaintiff would adjust its accounts with its agency, or transmit to the latter the amounts received from the debtor.

In the second place, the obligation contracted by the defendant was not to pay \$14,419.15 in dollars, but the equivalent of \$14,419.15 dollars, in Philippine currency. So, when defendant's obligation matured on October 4,

1949, the defendant had to pay to the Bank not the sum of \$14,467.21 representing the face value of the draft Exhibit A, plus \$18.06 as 1/8 of 1 per cent commission, but its equivalent in pesos at the time of such maturity, and had the defendant failed to satisfy then his obligation, he could be held liable to pay in addition thereof, the corresponding interests for the period of default and nothing else. And that is precisely what defendant is willing to pay.

From the foregoing, I hope to have made clear my stand on the matter.

DISSENTING

REYES, J. B. L., J.,

As, I view it, the question before this Court is whether it is the lender or the defaulting borrower who should bear the added cost of the depreciation of the peso in relation to the dollar.

When in 1949 the Philippine National Bank remitted to the Otis Elevator Co. the \$14,449.15 for the account of Zulueta, the Bank, in effect, loaned, to Zulueta said amount on the strength of his express engagement to "pay at maturity in Philippine Currency, the equivalent of the above amount," which was a promise to pay such amount in Philippine pesos as could be converted into \$14,449.15. There is no question that Zulueta failed to do so, and has refused to do so up to the present. In the meantime, in 1951, the Legislature enacted Rep. Act No. 601, imposing a 17 % special excise tax on foreign exchange transactions, so that thereafter one had to pay 234 pesos for every \$100, instead of P200 as heretofore. Should Zulueta be required to pay for the dollars at the new rate?

Since Zulueta's obligation is measured in terms of U.S. dollars that have increased in value vis-a-vis the peso, Art. 312, par. 1, of the Code of Commerce, which was the law then in force, must be read into the contract. It provides:

"If the loan consists of money, the debtor shall pay it by returning an amount equal to that received, in accordance with the legal value which the money may have at the time of the return, unless the kind of money in which the payment is to be made has been stipulated, in which case the change which its value may suffer shall be to the detriment or for the benefit of the lender." (Italics supplied)

The majority decision, in upholding the contention that Zulueta is not chargeable with the 17% tax, virtually authorizes just the contrary; and permits the defaulting borrower to repay an amount in pesos that, in violation of the law and his engagement, can not be converted into the same amount of dollars loaned to him. I believe it is contrary to all elemental justice and good faith to enable a borrower to return to his creditor less than the amount borrowed, specially taking into account that Zulueta, by his obdurate refusal to pay a just debt, is a debtor in bad faith who is responsible for any subsequent damages suffered by his creditor, even if due to fortuitous event.

Applicable here are the considerations in *Hawes vs. Woolcock* (26 Wis. 629, 635), quoted with approval in *Engel vs. Mariano Velasco & Co.*, 47 Phil. 115, 143:

"In *Hawes vs. Woolcock* (26 Wis., 629, 635), the court said: 'Perhaps a strict application of logical reasoning to the question would lead to the result that the premium should be estimated at the rate when the note fell due. That was when the money should have been paid, and when the default in performing the contract occurred. This conclusion would be supported by the analogy derived from the rule of damages on contracts to deliver specific articles, fixing the market price at the time when they ought to have been delivered as the criterion. This rule might sometimes be to the advantage of the holder of the note, as in the present case. In other cases, where the premium was less at the time the note became due than at the time of trial, it would be to his detriment. And in view of these uncertainties and fluctuations in the rate, upon grounds of policy as well as for its tendency to do as complete justice between the parties as is possible, we have come to the conclusion that

the true rule in such cases is to give judgment for such an amount as will, at the time of the judgment, purchase the amount due on the note in the funds or currency in which it is payable' "

The crucial point is that the Bank's action is not for damages, but for specific performance of Zulueta's obligation. While payable in Philippine pesos, it was actually one to pay a definite sum in United States dollars, since he promised to pay an equivalent amount. The failure to specify any fixed number of pesos, and the omission of any reference to any rate of exchange, is proof that the parties had in mind the restoration to the Bank of the value of the dollars it had advanced. In other words, Zulueta engaged to return to the Bank so many Philippine pesos as could be converted into \$14,449.15; and that is what the Bank now asks him to do. It can not be justly contended that if a debtor had borrowed, say, ten thousand dollars, the lender should be satisfied with eight or nine thousand. Yet that is what the majority's decision actually amounts to.

I see no point in determining the rate of dollar-peso exchange at the date of maturity or of the constitution of the obligation, since Zulueta did not engage to pay any definite amount of pesos, but so many as would be needed to make up \$14,449.15. And as Zulueta is being required to comply with a specific promise, there is no relevancy in whether or not the main office of the Bank has or has not remitted the dollars to its American agency; after all, the two are part of the same institution. Anyway, if the dollars have not been remitted, the amount that Zulueta is now sentenced to pay will not permit a remittance of the same number of dollars that the Bank advanced for his account. If they were heretofore remitted, the funds of the Bank in Manila have been diminished pro tanto, and they can not be replenished to their original level in terms of dollars unless Zulueta is required to pay the exchange tax.

Of course, the majority opinion has the merit of giving the Bank a costly lesson on the advantages of not considering political influence in the making and collecting of its loans; but I am afraid the experience will be too quickly forgotten to even palliate the sacrifice of fundamental justice to technical considerations.

For the foregoing reasons, I dissent.

Labrador, Concepcion and Endencia, JJ., concur.

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