

GEORGE W. BATCHELDER, DOING BUSINESS UNDER THE NAME AND STYLE BATCHELDER EQUIPMENT, PLAINTIFF-APPELLANT, VS. THE CENTRAL BANK OF THE PHILIPPINES, DEFENDANT-APPELLANT.*G.R. No. L-25071. March 29, 1972*

Ponente: FERNANDO, J.

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In essence, the pivotal legal question presented by this appeal of defendant Central Bank of the Philippines,[1] is whether or not the issuance of a monetary policy by it, thereafter implemented by the appropriate resolutions, as to the rate of exchange at which dollars after being surrendered and sold to it could be re-acquired, creates a contractual obligation. It was the holding of the lower court that in law there was such a contract, the terms of which had to be respected by defendant Central Bank. Such a conclusion is challenged in this appeal. For reasons to be hereinafter set forth, we find that the lower court was far too generous in its appreciation of the claim of plaintiff George W. Batchelder. The law in our opinion does not go that far, and accordingly, we reverse.

This is a suit filed by plaintiff George W. Batchelder to compel defendant Central Bank of the Philippines, now appellant, to resell to him \$170,210.60 at the preferred rate of exchange of two Philippine pesos for one American dollar, more specifically P2.00375, or, in the alternative, to pay to him the difference between the peso cost of such amount at the market rate prevailing on the date of the satisfaction of the judgment in his favor and the peso cost of \$170,210.60 at said preferred rate. Plaintiff likewise sought compensatory damages consisting of actual expenses of litigation and attorney's fees as well as exemplary damages.

Defendant Central Bank specifically denied in its answer certain facts set forth in the complaint and was quite insistent on the absence of any such right on the part of plaintiff to reacquire from it the sum of \$170,210.60 at the preferred rate of exchange. It would follow accordingly that it was not liable either to plaintiff for the difference between its peso cost at the rate prevailing on the date of the satisfaction of whatever judgment there may be in plaintiff's favor and the peso cost of \$170,210.60 at said preferred rate. There was likewise a denial of liability for compensatory and exemplary damages, attorney's fees, and costs of the suit.

According to the appealed decision: "From the evidence on record, it appears that the plaintiff is an American citizen who has been permanently residing in the Philippines and who is engaged in the construction business under the name and style of Batchelder Equipment. The defendant is a government corporation duly organized and existing under Republic Act No. 265." [2] Then came this portion: "On December 9, 1949, the defendant issued Central Bank Circular No. 20 imposing exchange controls in this jurisdiction* * *. To implement the program of exchange controls, the defendant issued subsequent circulars, one of which was Circular No. 44 dated June 12, 1953* * *. On July 16, 1959, Republic Act No. 2609 was approved which, among other things, provides that 'the monetary authorities shall take steps for the adoption of a four-year program of gradual decontrol.' To implement this program of gradual decontrol, defendant Central Bank issued Circular-No. 105 on April 25, 1960* * *, providing for the gradual lifting of the restrictions on transactions involving gold and foreign exchange.

Likewise, on the same date, it issued Circular No. 106 * * * governing the sale by agent banks — of foreign exchange in the free market. On September 12, 1960, Circular No. 105 was amended by Circular No. 111 * * * and by Circular No. 117 * * * on November 28, 1960. This last Circular No. 117 was amended by Circular No. 121 * * *-on March 2, 1961, which in turn, was amended by Circular No. 133 * * * on January 21, 1962, providing, among others, that 'only authorized agent banks may sell foreign exchange for imports' and 'such exchange should be sold at the prevailing free market rate to any applicant, without requiring prior specific licensing from the Central Bank.' "[3] The appealed decision went on to state "that on March 30, 1960, the U.S. Navy accepted the proposal of the plaintiff of March 18, 1960 in the sum of \$188,000.00 for the construction of the Mindanao Weather Station, Bukidnon, Mindanao, Philippines, in accordance with Bid Item 3, Yards and Docks Specifications No. 13374/59 * * *. "[4]

Reference was then therein made to the specific resolution of defendant Central Bank. Thus: "In connection with construction projects in U.S. military bases in the Philippines, the defendant through its Monetary Board, promulgated Monetary Board Resolution No. 857 on June 17, 1960 * * * which, in part, provided: 'I. General Policy Filipino and resident American contractors undertaking construction projects in U.S. military bases in the Philippines shall be authorized to utilize ninety per cent (90%) of the proceeds of their contracts for the purchase of construction equipment, spare parts and other supplies, regardless of commodity classification, to be used in projects inside the U.S. military bases in the Philippines, as well as for payment of imports of construction equipment, materials and supplies, except those commodity items falling under "NEC" and "UI" categories, either for resale or to be used in their projects outside the U.S. military bases: provided, that in the latter case (where the imported items will be used outside of their projects in the U.S. military bases) the margin levy shall be imposed.'"[5]

There was moreover an implementation of the above resolution with the Central Bank issuing "its Memorandum to Authorized Agent Banks ID-FM No. 11 dated June 23, 1960 * * *. Under Resolution No. 857 of the Monetary Board, which was fully quoted in the Memorandum to Authorized Agent Banks of the defendant * * *, it was specifically provided that: 'For imports against proceeds of contracts entered into prior to April 25, 1960, the preferred buying rate shall govern, regardless of the present commodity classifications.' "[6] There was however a modification arising from Monetary Board Resolution No. 695 of April 28, 1961, which specified that the agent bank should, upon compliance with its terms, credit the contractor's accounts in pesos, the buying rate being governed by the appropriate rules and regulations.[7]

The following facts as found by the lower court are likewise relevant: "It appears that in compliance with defendant's Monetary Board Resolutions Nos. 857 and 695 * * *, plaintiff surrendered to the Central Bank, through the latter's authorized agents, his dollar earnings amounting to U.S. \$199,966.00 * * *. The plaintiff also appears to have applied with the defendant for licenses to utilize 90% of his surrendered earnings or the sum of U.S. \$179,969.40, pursuant to the above-mentioned Monetary Board Resolutions Nos. 857 and 695, but was only allowed the amount of U. S. \$25,874.84 * * * or 21.41% of the amount applied for. The plaintiff demanded from the defendant that it be allowed to utilize the balance of the 90% of his surrendered dollar earnings. However, it was only on March 21, 1963, after the plaintiff had filed the complaint in the present case and after full decontrol had been established through Circular No. 133 dated January 21, 1962 * * *, that the defendant informed the plaintiff, through its communication * * *, that the latter could utilize at the free market rate the balance of his said 90% of surrendered earnings which had not previously been granted by the defendant for his importations. The present action, therefore, seeks to compel the defendant to permit the plaintiff to utilize the said balance of his 90% surrendered earnings for importation at the preferred rate of exchange which is P2.00 per U.S. \$1.00."[8]

The appealed decision took note that in answer to the contention of defendant Central Bank that the Monetary

Board Resolutions Nos. 857 and 695 relied upon simply laid down a mere policy without in any way giving rise to a valid and binding agreement to which the law should give effect, plaintiff Batchelder would stress that the enunciation of the policy embodied in the appropriate resolution did give rise to a contract that must be complied with. That argument found favor with the lower court, for in its opinion, "considering the facts surrounding the transaction between the plaintiff and the defendant the defendant is now bound by a contract, which could be implied from its stated policy, as enunciated in Monetary Board Resolutions Nos. 857 and 695, and plaintiff's reliance on said resolutions, to resell in favor of the plaintiff 90% of the U.S. dollars earned by him under U.S. Navy Contract aforementioned which were duly surrendered to the defendant." [9] The appealed decision recapitulated matters thus: "In short, it is apparent that by the issuance of its various resolutions and circulars aforementioned the defendant had considered the plaintiff and other contractors similarly situated with contracts with the U.S. military authorities predating April 25, 1960, as exempted from decontrol, pursuant to defendant's Monetary Board Resolutions Nos. 857 and 695. Hence, they are entitled to the utilization of the 90% of the U.S. dollars surrendered by them to the defendant at the preferred rate of exchange." [10]

Judgment was thus rendered in favor of plaintiff George W. Batchelder, ordering defendant Central Bank "to resell to plaintiff U.S. \$154,094.56 at the rate of exchange of Philippine peso P2.00375 per U.S. \$1.00 or, in the alter-native, to pay to the plaintiff in pesos the difference between the peso cost of said U.S. \$154,094.56 at the rate prevailing on the date of the satisfaction of judgment and the peso cost of said \$154,094.56 at said preferred rate." [11] As noted earlier, an appeal was interposed by defendant Central Bank, raising as a principal legal question that there was no such contractual obligation by virtue of which it could be held liable. It is its contention that its refusal to honor plaintiff's claim is impressed with validity in accordance with the governing provision of the existing rules and regulations governing the sale of foreign exchange. That, to repeat, is the crux of the litigation now before us. The appeal which plaintiff did likewise interpose, complaining against the alleged failure of the lower court to grant him actual expenses of litigation, attorney's fees as well as exemplary damages, is dependent on the disposition of such decisive issue posed as to the existence of a valid contractual commitment on the part of defendant Central Bank.

After carefully going over the records of the case as well as the briefs of the parties, it is the conclusion of this Court, as set forth at the outset, that the governing principle of law applicable to actuation of administrative agencies, like the Central Bank, precludes a finding that under the circumstances disclosed by the case, there was a contract in law giving rise to an obligation which must be fulfilled by such governmental body. A reversal, as already mentioned, is thus indicated.

1. We start with fundamentals. The Civil Code expressly provides that a contract is a meeting of minds between two persons whereby one binds himself with respect to the other to give something or render some service. [12] The above provisions is practically a restatement, with slight modification, of Article 1254 of the Civil Code of Spain of 1889, formerly enforced in our jurisdiction. Such an article, in the opinion of Justice J.B.L. Reyes, speaking for the Court, in *A. Magsaysay, Inc. vs. Cebu Portland Cement Co.*, [13] requires that "the area of agreement must extend to all points that the parties deem material or there is no contract." [14] It is noteworthy that in his *Outlines on Civil Law*, with Judge Ricardo Puno as co-author, he speaks highly of Article 1321 of the Civil Code of Italy. It reads thus: "A contract is the accord of two (or more) persons (with previously diverging interests) for the purpose of creating, modifying or extinguishing a juridical relation between them." [15] Likewise all commentators on the Civil Code have agreed that the birth or perfection of a consensual contract, Article 1315, commences from the moment the parties come to an agreement on a definite subject matter and valid consideration. Justice Capistrano, who was with the Code Commission, and Senators Ambrosio Padilla and Arturo Tolentino, all three distinguished in the field of civil law, are substantially in agreement. [16]

Planiol states the following: "The consent of the parties, that is to say, the accord of wills, is the essential element of every contract* * *. The consent, in the matter of contracts, is composed of a double operation. (1) The parties must commence by agreeing as to the contents of the 'convention' that is to say, by making sufficiently precise the object and the essential conditions, and discussing the particular clauses which they desire to introduce to modify or to complete the ordinary effects * * *. (2) This first operation having been terminated, the parties are in accord on the projected contract: there is between them what Littre calls the uniformity of opinions, which is one sense of the word 'consent', but the contract is not concluded, it still exists in a projected state. There remains to give its obligatory force by an act of will, expressing the individual adherence of each one of the parties to the act thus prepared. * * *. When all the necessary consents (sic) are obtained, and manifested in legal form, the contract is formed, the lien of law is tied. It is therefore the union of these adherences (sic) which constitute the contract and which gives birth to the obligations which are derived from it. It is an act of volition, while the preliminary operation of discussion of the project is a work of the mind and reasoning." [17]

In their Jurisprudence and Legal Philosophy, the late Professors Morris R. Cohen and Felix R. Cohen, father and son and jurists of note, noted that the concepts found in the Civil Code of Spain showing basic contract rules are "equally valid in France, Chile, Columbia, Germany, Holland, Italy, Mexico, Portugal and many other lands, and equally honored across eighteen and more centuries* * *." Even more impressive is their conclusion that the views of such common law scholars as Maine, Williston, Pound, Holdsworth, Llewellyn, and Kessler, are not dissimilar. Thus Pollock could describe the English common law by quoting whole paragraphs from a German scholar's description of the law of ancient Rome. It is in that sense that for them the Roman phrasing *contrahitur obligatio* "throws more light than volumes of exegesis: One contracts an obligation as one contracts pneumonia or any other disability. Contract is that part of our legal burdens that we bring on ourselves." [18]

If there be full cognizance of the implications of the controlling principles as thus expounded, impressive for their well-nigh unanimity of approach, the conclusion reached by the lower court certainly cannot be accepted as correct.

2. As is so evident from the recital of facts made in the lower court and equally so in the brief of plaintiff Batchelder, as appellant, what was done by the Central Bank was merely to issue in pursuance of its rule-making power the resolutions relied upon by plaintiff, which for him should be impressed with a contractual character. Insofar as this aspect of the matter is concerned, his brief speaks for itself. "In July, 1959, the Republic of the Philippines adopted a gradual decontrol program through the enactment of Republic Act No. 2609. To implement this legislation defendant Central Bank issued Circulars Nos. 105 and 106 both dated April 25, 1960 * * *. The exchange rate under the decontrol program was higher than the prevailing rate before decontrol of P2.00 per US \$1.00. On March 30, 1960, plaintiff-appellant entered into a contract with the United States Navy for the construction of a weather station in Bukidnon, Mindanao covered by U.S. Navy Contract No. NBy-13374 * * *. On June 17, 1960, the defendant-appellant through its governing Monetary Board promulgated Resolution No. 857 * * * and implemented this resolution through its Memorandum to Authorized Agent Banks, I.D.-FM No. 11 dated June 23, 1960 * * *. Under Resolution No. 857 and the implementing circular aforesaid, Filipino and American resident contractors for constructions in U.S. military bases in the Philippines whose contracts antedated April 25, 1960 were required to surrender to the defendant-appellant Central Bank their dollar earnings under their respective contracts but were entitled to utilize 90% of their surrendered dollars for importation at the preferred rate of commodities for use within or outside said U.S. military bases. The defendant-appellant pursuant to the decontrol program also promulgated Circulars Nos. 111, 117 and 121, dated September 12, 1960* * *; November 28, 1960 * * *; and March 2, 1961 * * *, respectively, and finally adopted full decontrol through its Circular No. 133 dated January 21, 1962* * *. Defendant-appellant also promulgated Monetary Board Resolution No. 695 dated April 28, 1961 * * * amending MB Resolution No. 857 of June 23, 1960, and implementing the

former through Memorandum Id-FM No. 30 on May 18, 1961 * * * "[19]

There is no question that the Central Bank as a public corporation could enter into contracts. It is so provided for among the corporate powers vested in it. Thus: "The Central Bank is hereby authorized to adopt, alter, and use a corporate seal which shall be judicially noticed; to make contracts; to lease or own real and personal property, and to sell or otherwise dispose of the same; to sue and be sued; and otherwise to do and perform any and all things that may be necessary or proper to carry out the purposes of this Act." No doubt would have arisen therefore if defendant Central Bank, utilizing a power expressly granted, did enter into a contract with plaintiff. It could have done so, but it did not do so. How could it possibly be maintained then that merely through the exercise of its regulatory power to implement statutory provisions, a contract as known to the law was thereby created?

Yet that is precisely what the lower court held in reaching such a conclusion. It was not only unmindful of the controlling doctrines as to when a contract exists, but it was equally oblivious of the competence lodged in an administrative agency like the Central Bank. Even the most cursory perusal of Republic Act No. 265 would yield the irresistible conclusion that the establishment of the Central Bank was intended to attain basic objectives in the field of currency and finance. In the language of the Act: "[20] It shall be the responsibility of the Central Bank of the Philippines to administer the monetary and banking system of the Republic. It shall be the duty of the Central Bank to use the powers granted to it under this Act to achieve the following objectives: (a) to maintain monetary stability in the Philippines; (b) to preserve the international value of the peso and the convertibility of the peso into other freely convertible currencies; and (c) to promote a rising level of production, employment and real income in the Philippines." [21]

It would be then to set at naught fundamental concepts in administrative law that accord due recognition to the vesting of quasi-legislative and quasi-judicial power in administrative law for the purpose of attaining statutory objectives, especially now that government is saddled with greater responsibilities due to the complex situation of the modern era, if the lower court is to be upheld. For if such be the case then, by the judiciary failing to exercise due care in its oversight of an administrative agency, substituting its own discretion for what usually is the more expert appraisal of such an instrumentality, there may even be a frustration if not a nullification of the objective of the law.

Nor is this to deal unjustly with plaintiff. Defendant Central Bank in its motion to dismiss before the lower court was quite explicit as to why under the circumstances, no right could be recognized as possessed by him. As set forth in such pleading: "We contend that Monetary Board Resolution No. 857, dated June 17, 1960, as amended by Monetary Board Resolution No. 695, dated April 28, 1961, does not give any right to Filipino and resident American contractors undertaking construction projects in U.S. military bases to reacquire at the preferred rate ninety per cent (90%) of the foreign exchange sold or surrendered to defendant Central Bank thru the authorized agent banks. Nor does said resolution serve as a general authorization or license granted by the Central Bank to utilize the ninety per cent (90%) of their dollar earnings. M.B. Resolution No. 857, as amended, merely laid down a general policy on the utilization of the dollar earnings of Filipino and resident American contractors undertaking projects in U.S. military bases, * * * "[22] Further, there is this equally relevant portion in such motion to dismiss: "It is clear from the aforecited provisions of said memorandum that not all imports against proceeds of contracts entered into prior to April 25, 1960 are entitled to the preferred buying rate of exchange. Only imports against proceeds of contracts entered into prior to April 25, 1960 not otherwise classified as dollar-to-dollar transactions, are entitled to the preferred rate of exchange. It is for this reason that the contractor is required to first file an application with defendant Central Bank (Import Department) thru the Authorized Agent Banks, for the purpose of determining whether the imports against proceeds of contracts entered into prior to April 25, 1960 are classified as dollar-to-dollar transactions (which are not entitled to the preferred rate of exchange) or not (which are entitled

to preferred rate of exchange), and that if said imports are entitled to the preferred rate of exchange, defendant Central Bank would issue a license to the contractor for authority to buy foreign exchange at the preferred rate for the payment of said imports." [23]

Had there been greater care therefore on the part of the plaintiff to show why in his opinion he could assert a right in accordance not with a contract binding on the Central Bank, because there is none, but by virtue of compliance with rules and regulations of an administrative tribunal, then perhaps a different outcome would have been justified.

3. With the disposition this Court makes on this appeal of defendant Central Bank, there is no need to consider at all the appeal of the plaintiff insofar as the lower court denied his plea for the recovery of the actual expenses of litigation, attorney's fees and exemplary damages. Clearly there is no ground for the award of such items sought.

WHEREFORE, the decision of the lower court of January 10, 1963 is reversed and the complaint of the plaintiff dismissed, without prejudice to his taking the appropriate action to enforce whatever rights he possesses against defendant Central Bank in accordance with its valid and binding rules and regulations. With costs against plaintiff.

Concepcion, C.J, Reyes, J.B.L., Makalintal, Zaldivar, Villamor, and Makasiar, JJ., concur.

Castro, Teehankee, and Barredo, JJ., in the result.

[1] While the principal issue is as set forth above, plaintiff George W. Batchelder also elevated the matter to us insofar as he was not allowed to recover the actual expenses of litigation and attorney's fees as well as exemplary damages. This decision then likewise disposes of such appeal.

[2] Decision, Record on Appeal, p. 169.

[3] Ibid, pp. 169 -170.

[4] Ibid, p. 170.

[5] Ibid, pp. 170-171.

[6] Ibid, p. 172.

[7] Cf, Ibid, pp. 171-172. Also Brief for Respondent Central Bank, pp. 36-37.

[8] Ibid, pp. 172-173.

[9] Ibid, p. 176.

[10] Ibid, p. 177.

[11] Ibid, pp. 179-180.

[12] Art. 1305 reads as follow: "A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service."

[13] 100 Phil. 351 (1956).

[14] Ibid, p. 354.

[15] IV Reyes and Puno, Outline of Philippine Civil Law, 169 (1958).

[16] Cf. III Capistrano, Civil Code of the Philippines, p. 306 (1950); IV Padilla, Civil Law, 1967 ed., 524; IV Tolentino, Civil Code Annotated, pp. 402-403 (1960).

[17] 2 Planiol, Treatise on the Civil Law, pp. 545-546 (1965).

[18] Jurisprudence and Legal Philosophy, pp. 101-102 (1951).

[19] Brief for Plaintiff as Appellant, pp. 6-8.

[20] Sec. 4, Rep. Act No. 265 (1948).

[21] Sec. 2, Ibid.

[22] Record on Appeal, pp. 49-50.

[23] Ibid, pp. 55-56.

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