

**REPUBLIC RESOURCES AND DEVELOPMENT CORPORATION,
PETITIONER, VS. COURT OF APPEALS AND UNITED GEOPHYSICAL
COMPANY, S.A. (COSTA RICA), RESPONDENTS.**

G.R. No. L-33438. October 28, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition under Rule 45 of the Rules of Court to review the decision of the Court of Appeals in C.A.-G.R. No. 41351-R entitled "United Geophysical Company, S.A. (Costa Rica) versus Republic Resources and Development Corporation," promulgated on 26 January 1971, which affirms in all respects, except as to the amount of attorney's fees, the decision of Branch XVI of the then Court of First Instance of Manila (now Regional Trial Court), Branch XVI, in Civil Case No. 59543.

The facts and procedural antecedents of the case are summarized by the Court of Appeals, thus:

"The United Geophysical Company, S.A. (Costa Rica), the plaintiff-appellee herein, is a corporation duly organized and existing under the laws of Costa Rica (Exhibit A). It is the successor-in-interest of the United Geophysical Company, S.A. (Venezuela) [hereinafter referred to as United Venezuela], duly licensed by the Securities and Exchange Commission to engage in geological and geophysical work in the Philippines (Exhibit K).

On 15 December, 1959, the United Venezuela and the Republic Resources and Development Corporation, the defendant-appellant herein, executed, with the approval of the Director of Mines, a seismograph service contract wherein the United Venezuela undertook to conduct for the defendant-appellant for a minimum period of 12 months, commencing from January, 1960, geophysical surveys in the Philippines in search of sub-surface geological structures favorable to the accumulation of oil and gas. On its part, appellant agreed to pay a contract fee in the amount of U.S.\$23,000.00 per month, fifty percent (50%) of which was to be paid in U.S. dollars and the other fifty percent (50%) to be paid in Philippine pesos. The defendant-appellant also agreed to reimburse the United Venezuela at cost plus 5% of the cost of returning to the point of origin all the expatriate personnel, equipment and supplies utilized by United Venezuela in conducting the required surveys.

The defendant-appellant paid in full the contract fees payable in Philippine pesos for the whole year of 1960. But it paid only the contract fees payable in dollars corresponding to the period from January to July 1960, and a part of the fee corresponding to August 1960. It failed to pay the contract fees payable in dollars corresponding to the period from part of August to December of 1960, amounting to \$34,908.33 and the sum of \$3,713.33 representing the cost plus 5% of returning the equipment from the Philippines to Australia, the point of origin (Exhibit E).

After several demands made upon defendant-appellant to pay its total liability of \$38,622.66, it made on 8 November, 1963 a part payment in the sum of \$10,000.00 with the request that the balance of \$28,622.66 be reduced (Exhibits 1-4 and 1-4-a). Defendant-appellant, by way of amicable settlement of the said balance, offered to pay another \$10,000.00 requesting condonation of \$18,000.00 (sic). This offer was rejected, and on January 11, 1965 the present action was filed to recover said balance of U.S.\$28,622.66.

When this case was filed, defendant-appellant renewed its offer to pay its outstanding account provided its obligation would be reduced to \$20,000 payable in two equal installment (sic), the first to be due on or before June 30, 1965 and the second installment to be due on or before December 31, 1965 (Exhibit 1-9). Plaintiff-appellee accepted this offer in (sic) condition that the proposed settlement be submitted to the Court for approval and such proposed payment be secured by a surety bond (Exhibit 1-10). Defendant-appellant did not act upon this counter-proposal; and instead, it filed an answer with counterclaim to the complaint.

The case was then set for trial on the merits on April 2, 1966. On said date, neither the defendant-appellant nor its counsel appeared; hence, the plaintiff-appellee was allowed by the trial court to present its evidence ex parte, and the case was deemed submitted for decision. The defendant-appellant filed a petition to re-open the case, which was granted by the trial court. The case was set for the reception of defendant's evidence on May 14, 1966. On said date, the defendant-appellant, instead of presenting its evidence, asked for postponement of the hearing on the ground that it desired to secure the deposition of a vital witness residing in the United States. The lower court granted the motion, but the defendant-appellant failed to secure said deposition despite the lapse of a reasonable period. On motion of the plaintiff, the case was re-set for hearing on November 24, 1966. The defendant-appellant asked for and was granted another postponement, and the case was finally set for hearing on December 8, 1966. Again, neither the defendant-appellant nor its counsel appeared on said date, and the case was ordered submitted for decision on the evidence already presented by the plaintiff-appellee.

On March 20, 1967, the court a quo rendered a decision the dispositive portion of which reads as follows:

'WHEREFORE, judgment is hereby rendered ordering the defendant to pay plaintiff the principal sum of \$28,622.66 converted into Philippine pesos at the rate of exchange prevailing at the time of payment, with legal interest thereon from November 8, 1962 and whatever fees the commercial banks will charge for transmitting the same from the Philippines to the plaintiff's principal office at Pasadena, California, U.S.A.; the further sum of P5,000.00 plus 20% of the amount due as attorney's fees; and costs.

Defendant's counterclaim are (sic) dismissed.

SO ORDERED.'

(underscoring supplied)

From the foregoing decision, defendant has interposed the instant appeal and assigned the following errors allegedly committed by the trial court:

I

'The Court a quo miserably erred in its decision by not stating clearly and distinctly the facts and the law on which said decision was based.

II

The Court a quo erred in finding that appellant is still liable to plaintiff-appellee in (sic) the amount of P28,622.66.

III

The Court a quo erred in awarding P5,000 and 20% of the amount due as attorney's fees.

IV

The Court a quo deprived appellant of its day in court."^[1]

The defendant-appellant referred to is the Petitioner in the instant case.

On 26 January 1971, the respondent Court of Appeals (Second Division) promulgated a Decision,^[2] the dispositive portion of which reads:

"WHEREFORE, with the sole modification that the award for attorney's fees be reduced to P10,000.00, the judgment appealed from is affirmed in all other respects, with costs against defendant-appellant."

Petitioner received a copy of said decision on 27 January 1971. Its first and second motions for reconsideration having been denied, petitioner filed the instant petition.

Petitioner does not dispute any of the factual findings of the Court of Appeals; it, however, raises in issue the legal conclusions drawn therefrom, to wit:

A) THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S \$28,622.66 OBLIGATION SHOULD BE PAID AT THE RATE OF EXCHANGE PREVAILING AT THE TIME OF PAYMENT.

B) THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S LIABILITY FOR INTEREST ON ITS UNPAID OBLIGATION SHOULD BEGIN FROM NOVEMBER 8, 1962.^[3]

Petitioner and private respondent separately filed their Briefs on 13 August 1971 and 17 December 1971, respectively.

The petition is without merit. Firstly, recourse to this Court is patently dilatory. As shown in the summary of the facts and procedural antecedents, petitioner chose not to present its evidence despite the accommodation extended and the opportunity granted it by the trial court to present and submit its evidence.

Secondly, the grounds raised in this petition were not assigned as errors before the respondent Court. A party is not permitted to raise before this Court an issue which he did not raise either in the lower court or in the Court of Appeals.^[4]

Finally, it is clear from Section 1 of R.A. No. 529 that what is declared null and void is the "provision contained in, or made with respect to, any domestic obligation, to wit, any obligation contracted in the Philippines which provision purports to give the obligee the right to require payment in gold or in a particular kind of coin or currency other than Philippine currency or in an amount of money of the Philippines measured thereby"^[5] and not the contract or agreement which contains such proscribed provision.^[6]

As to the rate of exchange, a distinction has to be made between obligations incurred prior to the Act and those incurred after its enactment. As to the former, Section 1 of the Act explicitly provides that:

"x x x if the obligation was incurred prior to the enactment of this Act^[7] and required payment in a particular kind of coin or currency other than Philippine currency, it shall be discharged in Philippine currency measured at the prevailing rates of exchange at the time the obligation was incurred, except in case of a loan made in a foreign currency stipulated to be payable in the same currency, in which case the rate of exchange prevailing at the time of the stipulated date of payment shall prevail."^[8]

As to obligations incurred after enactment such as that of the petitioner's in favor of private respondent, *Kalalo vs. Luz*^[9] ruled that the rate of exchange should be that prevailing at the time of payment. Thus:

"x x x Republic Act 529 does not provide for the rate of exchange for the payment of obligation incurred after

the enactment of said Act. The logical conclusion, therefore, is that the rate of exchange should be that prevailing at the time of payment. This view finds support in the ruling of this Court in the case of *Engel vs. Velasco & Co.*[10] where this court held that even if the obligation assumed by the defendant was to pay the plaintiff a sum of money expressed in American currency, the indemnity to be allowed should be expressed in Philippine currency at the rate of exchange at the time of judgment rather than at the rate of exchange prevailing on the date of defendant's breach. This is also the ruling of American Courts, as follows:

'The value in domestic money of a payment made in foreign money is fixed with respect to the rate of exchange at the time of payment.' (70 CJS, p. 228)

'According to the weight of authority the amount of recovery depends upon the current rate of exchange, and not the par value of the particular money involved.' (48 C.J. 605-606)

'The value in domestic money of a payment made in foreign money is fixed in reference to the rate of exchange at the time of such payment.' (48 C.J. 605)"

This ruling modified the decision in *Arrieta, et al. vs. National Rice and Corn Corp.*.[11] Said this Court:

"This ruling modifies the decision in *Arrieta vs. National Rice and Corn Corporation*, L-15645, January 31, 1964 (10 SCRA 79), where it was held that the obligation based on dollar should be converted into the Philippine peso at the rate of exchange prevailing at the time the obligation was incurred, or on July 1, 1952. The provision of Rep. Act 529 was wrongly applied in this case, because the obligation arose after the enactment of Rep. Act 529 (June 16, 1950). The rate of exchange prevailing at the time the obligation was incurred would apply only to obligations that were incurred prior to the enactment of Rep. Act. 529, but not to obligations incurred after the enactment of said Act."

Petitioner's appeal then to the *Arrieta* case is an exercise in futility.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered DISMISSING the petition and AFFIRMING in toto the challenged Decision of the respondent Court of Appeals in C.A.-G.R. No. 41351-R.

Costs against petitioner.

IT IS SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Bidin, and Romero, JJ., concur.

[1] Annex "A" of Petition; Rollo, 47-51.

[2] Per then Associate Justice Juan P. Enriquez, concurred in by former Associate Justices Edilberto Soriano and Lourdes P. San Diego.

[3] Petitioner's Brief, 2-3; Rollo, 109.

[4] *Santos vs. IAC*, et al., 145 SCRA 592; *Petilla, et al. vs. Court of Appeals*, et al., 151 SCRA 1; *Commissioner of Internal Revenue vs. Wander Philippines, Inc.*, et al., 160 SCRA 573; *Espadera, et al. vs. Court of Appeals*, et al., 165 SCRA 364; *Llantino, et al. vs. Co Liong Chong*, 188 SCRA 592.

[5] Underscoring supplied.

[6] See *Eastboard Navigation, Ltd. vs. Juan Ysmael and Co. Inc.*, 102 Phil. 1; *Ponce vs. Court of Appeals*, 90 SCRA 533; *San Buenaventura vs. Court of Appeals*, 181 SCRA 197; *General Insurance & Surety Corp. vs. Union Insurance Society of Canton Ltd.*, et al., 179 SCRA 530.

[7] The Act was enacted on 16 June 1950.

[8] Underscoring supplied for emphasis.

[9] 34 SCRA 337 (1970).

[10] 47 Phil. 115.

[11] 10 SCRA 79 (1964).

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