

ROBERT JANDA, AS ADMINISTRATOR OF THE ESTATE OF WALTER C. WURDEMAN, PLAINTIFF AND APPELLANT, VS. LEPANTO CONSOLIDATED MINING COMPANY, DEFENDANT AND APPELLEE.

G.R. No. L-6930. May 25, 1956

Ponente: PADILLA, J.

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PADILLA, J.:

This is an action to compel the Lepanto Consolidated Mining Company to transfer or register in its books 2,500 shares of its stock sold by the plaintiff in his capacity as ancillary administrator of the estate of the late Walter C. Wurdeman, the registered owner thereof, on the Manila Stock Exchange on 27 August 1952 through the brokerage firm of Hall, Picornell, Ortigas & Company at P0.81 per share, in compliance with an order of the pines and expenses of administration of the estate, the transfer and registration of which were refused by the defendant despite presentation of certificate No. 10578 for 7,500 shares in the name of Walter C. Wurdeman duly indorsed for the transfer of 2,500 shares by the plaintiff as ancillary administrator of the estate and of a copy of the order of the probate court entered in the special proceedings for ancillary administration of the estate of the late Walter C. Wurdeman, to recover P178.13, the difference between the selling price at P0.81 a share of 2,500 shares sold in the manner and form already stated and the purchase price at F0.84 per share of the same number of shares at which the plaintiff as administrator of the estate had to pay to meet and fulfill his commitment to the brokers as a result of the defendant's refusal to transfer the number of shares of the estate sold for the purpose and in the manner above stated; to recover P1,000 for attorney's fees and expenses of litigation; and to have and receive such other and further relief as the Court may deem proper to grant.

Answering the plaintiff's complaint, the defendant admits that it refused to comply with the plaintiff's demand to take out of certificate No. 10578 representing 7,500 shares of its stock registered in the name of Walter C. Wurdeman, a non-resident, 2,500 shares to be used in the name of Hall, Picornell, Ortigas & Company, for the reason that the defendant could not change the registered owner of the aforesaid shares from a non-resident to a resident without a prior license from the Central Bank or any of its authorized representatives; that the transfer or registration demanded by the plaintiff was penalized by the Central Bank regulations; that the order of the probate court authorizing the sale of the shares belonging to the estate of the late Walter C. Wurdeman was void, because there was no proof in the record of the publication of notice to creditors requiring them to file their claims, as provided for in section 3, Rule 87, and as directed by the Court in its order of 19 November 1951, and because the petition to sell personal assets of the estate of the deceased located in the Philippines was not accompanied by proof of notice to interested persons, by publication or otherwise, as required by Section 7, Rule 90; that assuming that the order of the Court to sell part of the assets of the estate of the deceased was valid, the order could not override the regulations of th Central Bank; that the amount of damages the plaintiff claimed to have suffered, as stated in his second cause of action, was caused not by the defendant but by the plaintiff himself for refusing to secure the license required by the regulations of the Central Bank which could hav6 been easily obtained from any of the authorized security dealers at no expense to the estate of the late Walter C. Wurdeman; that not only was

there no need for bringing this action and for incurring expenses and attorney's fees for the reason just mentioned but also because section 7, Rule 86, provides that "When the executor or administrator is an attorney he shall not charge against the estate any professional fees for legal services rendered by him;" that the plaintiff is an attorney; that because the defendant was required to appear in court and to defend itself in this case in which it has absolutely no interest, pecuniary or otherwise, outside of complying with the law and guarding against a possible criminal liability should the act demanded by the plaintiff be recklessly complied with, this action is wholly frivolous, vexatious and unfounded, and under Article 2208, sections 1 and 4, of the new Civil Code, attorney's fees and expenses of litigation other than judicial costs may be recovered. Upon these allegations it prays that the complaint be dismissed with costs against the plaintiff and the latter be ordered to pay the defendant P2,000 for attorney's fees.

The plaintiff denies that the action is frivolous and claims that it is just, equitable and legal; that the defendant should not be granted indemnity for damages in the sum of P2,000, for the defendant has suffered none. Upon motion of the defendant, the Solicitor General was directed to appear, the validity of the regulations of the Central Bank being involved and assailed.

After hearing, the Court rendered judgment declaring that as "the regulations of the Central Bank subjecting to license all transactions in gold and foreign exchange are within the power and authority conferred upon it by Republic Act No. 265," the defendant is not liable for any damage that the plaintiff may have suffered by reason of its refusal to register in its books the transfer of 2,500 shares of its stock to the brokerage firm Hall, Picornell, Ortigas & Company presented to it for transfer and registration without the license of the Central Bank. The Court dismissed the defendant's counterclaim for damages but the costs were taxed against the plaintiff. In effect, the Court dismissed the complaint and the counterclaim. In support of its judgment the Court said:

There can be no doubt that the sale of shares of stock belonging to a non-resident involves transaction in foreign exchange. By that sale the dividends accruing to the foreign resident will be diminished to the extent of the value of the shares of stock sold to a resident of the Philippines. Any transaction involving assets within the Philippines owned by a non-resident will necessarily involve exchange operations because should the transaction be a sale, the proceeds will ultimately be sent abroad, or should the transaction be a purchase by a non-resident, payment will have to be made in foreign currency. The transaction in question involves exchange between Philippine peso and American dollar. The regulations, therefore, of the Central Bank, particularly Circular No. 20, are within the powers and authority conferred upon it by the legislature and consequently the same are valid.

A motion for reconsideration was denied. Hence this appeal.

Under and pursuant to the provisions of section 74 of Republic Act No. 265 which provides:

Notwithstanding the provisions of the third paragraph of the preceding section, in order to protect the international reserve of the Central Bank during an exchange crisis and to give the Monetary Board and the Government time in which to take constructive measures to combat such a crisis, the Monetary Board, with the concurrence of at least five of its members, and with the approval of the President of the Philippines, may temporarily suspend or restrict sales of exchange by the Central Bank and may subject all transactions in gold and foreign exchange to license by the Central Bank. The adoption of the emergency measures authorized in this section shall be subject to any executive and international agreement to which the Republic of the Philippines is a party.

the Central Bank promulgated on 9 December 1949 Circular No. 20 which partly provides:

Restrictions On Gold And Foreign Exchange Transactions,

- Pursuant to the provisions of Republic Act No. 265 (Central Bank Act) the Monetary Board, by unanimous vote and with the approval of the President of the Philippines, and in accordance with Executive and International Agreements to which the Republic of the Philippines is a party, hereby restricts sales of exchange by the Central Bank and subjects all transactions in gold and foreign exchange to licensing by the Central Bank.

- Transactions in the assets described below and all dealings in them of whatever nature, including, where applicable, their exportation and importation, shall not be effected, except with respect to deposit accounts included in sub-paragraphs (b) and (c) of this paragraph, when such deposit accounts are owned by, and in the name of, banks.

(a) Any and all assets, provided they are held through, in, or with banks or banking institutions located in the Philippines, including money, checks, drafts, bullions, bank drafts, deposit accounts (demand, time and savings), all debts, indebtedness or obligations, financial securities commonly dealt in by bankers, brokers and investment houses, notes, debentures, stocks, bonds, coupons, bank acceptances, mortgages, pledges, liens or other rights in the nature of security, expressed in foreign currencies, or if payable abroad, irrespective of the currency in which they are expressed, and belonging to any person, firm, partnership, association, branch office, company or other unincorporated body or corporation residing or located within the Philippines;

(b) Any and all assets of the kinds included and or described in sub-paragraph (a) above, whether or not held through, in, or with banks or banking institutions, and existent within the Philippines, which belong to any person, firm, partnership, association, branch office, agency, company or other unincorporated body or corporation not residing or located within the Philippines; (*Italics supplied.*)

(c) Any and all assets existent within the Philippines including money, checks, drafts, bullions, bank drafts, all debts, indebtedness or obligations, financial securities commonly dealt in by bankers, brokers and investment houses, notes, debentures, stock, bonds, coupons, bank acceptances, mortgages, pledges, liens or other rights in the nature of security expressed in foreign currencies, or if payable abroad, irrespective of the currency in which they are expressed, and belonging to any person, firm, partnership, association, branch office, agency, company or other unincorporated body or corporation residing or located within the Philippines. (47 Off. Gaz. 5567.)

Supplemented by "Notification to Authorized Security Dealers No. 1," promulgated on 18 January 1950 which partly provides:

3. Security transactions for which licenses are required— a. Every sale, assignment, encumbrance, transfer, or delivery of securities by a resident of the Philippines to a non-resident requires a license. This applies to transactions in both Philippine and foreign securities whether the transactions are effected in the Philippines or outside and whether or not an export or import of securities is involved. A resident broker or dealer who is effecting a purchase of securities in the Philippines for a non-resident is regarded as the resident selling such securities to a non-resident even though the broker or dealer is acting as agent and not as principal in the transaction; a license is, therefore, required by the broker or dealer for such a transaction. Applications for licenses to engage in such transactions should be filed on E. C. Form X.

b. Every export of securities from the Philippines requires a license. Applications for such licenses should be filed on E. C. Form X.

c. A license is required for all of the following security transactions and applications therefore should be filed on E. C. Form Y.

(1) Every sale of securities in the Philippines or for delivery in the Philippines by a non-resident; and

(2) Every purchase by a resident of any securities owned by a non-resident, or the sale in the Philippines by a resident of any securities for or owned by a non-resident, unless

- (i) A license has been granted to the non-resident authorizing the sale; or
- (ii) The purchase arises out of an exchange of securities for which a license has been granted pursuant to an application made on E. C. Form X. (Exhibit 6). *Italics supplied.*

and by "Notification to Authorized Agents No. 25." promulgated on 17 February 1950, which partly provides:

In general the foreign exchange control regulations affect all transactions having international financial implications. The following is a partial list of various classes of transactions which requires authorization by or on behalf of the Central Bank:

- (a) Purchases and sales of, and other dealings in, foreign exchange ;
- (b) Payments in pesos by residents to, or to accounts of, non-residents;
- (c) Exports of coin, currency, checks, drafts, traveller's checks, etc.;
- (d) Exports of securities;
- (e) Sales, assignments, incumbrances, transfers, and deliveries of securities by residents to non-residents, either in the Philippines or elsewhere, and purchases etc. in the Philippines of securities by non-residents from resident; and
- (f) Sales of securities in the Philippines by non-residents and purchases of securities by residents from non-residents, either in the Philippines or elsewhere. (Exhibit 4.) *Italics supplied.*

These two notifications were not published in the Official Gazette.

The authority granted to the Central Bank under section 74, Republic Act No. 265 is to "temporarily suspend or restrict sales of exchange * * * and may subject all transactions in gold and foreign exchange to license" "in order to protect the international reserve of the Central Bank during an exchange crisis and to give the Monetary Board and the Government time in which to take constructive measures to combat such a crisis." And "the Monetary Board, with the concurrence of at least five of its members, and with the approval of the President of the Philippines," may take such step, to wit: to "temporarily suspend or restrict sales of exchange by the Central Bank and may subject all transactions in gold and foreign exchange to license by the Central Bank."

Foreign exchange is the conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another. If that is what foreign exchange is and means, we fail to see how a sale of shares of stock of a domestic corporation belonging to a non-resident for the purpose of paying taxes due the Government of the Republic or any of its subdivisions, agencies, or instrumentalities and expenses incurred in the administration of the estate of a deceased may be considered a transaction in foreign exchange. By the sale of the shares of stock belonging to a non-resident to a resident, dividends declared from time to time by the corporation, accruing and payable to a non-resident before the sale, part of which could only be remitted to him, as provided for in the regulations of the Central Bank, would no longer accrue and be payable to the non-resident but to the resident purchaser. In that case, we again fail to see how the disappearance or absence of the need or reason for remitting part of the dividends to a non-resident because they are due and payable to the resident purchaser may still be deemed a transaction in foreign exchange. The probability of remittance abroad of the proceeds of the sale of shares to a non-resident seller thereof does not make the sale of the shares to a resident a transaction in foreign exchange. A probable or possible remittance abroad of the proceeds of the sale of the shares is not a transaction in foreign exchange. It is no transaction at all. When such remittance is to be made the Central Bank steps in, as no remittance of funds abroad may be effected without the approval or license of the Central Bank. Take a case where a non-resident is not the seller but the purchaser of the shares. A non-resident purchaser has to use his

foreign funds and convert them into pesos to enable him to purchase the shares of stock. Such conversion cannot be made without the intervention of the Central Bank. Or, he may avail himself of the funds (pesos) belonging to another and credit the latter with an amount in foreign currency equivalent to the sum he had used to purchase the shares of stock. The only conceivable way of regarding the last transaction as one in foreign exchange would be because of the remittance of part of the dividends that the corporation may declare to the non-resident shareholder. But then again the Central Bank would have a hand in such a remittance for without its approval or license part of such dividends could not be sent abroad to the non-resident shareholder.

If the Central Bank regulations above transcribed and quoted are to be construed as subjecting to license all transactions similar to the one involved in the instant case, we do not hesitate to hold that such regulations as thus construed are ultra vires, because they do not come within the authority granted in section 74 of Republic Act No. 265. Nevertheless, the defendant cannot be held answerable for damages, because it only complied with the regulations of the Central Bank and it was not within its competence to interpret but to comply with such regulations. There is no evidence as to the amount of damages suffered by the defendant by reason of the institution of this action by the plaintiff.

Conformably thereto, the judgment appealed from is reversed insofar as it dismisses the first cause of action of the complaint and affirmed insofar as it dismisses the second and third causes of action thereof and the counter-claim. The defendant is directed to transfer and register the 2,500 shares of its stock sold by the plaintiff in his capacity as ancillary administrator of the estate of the late Walter C. Wurdeman to the brokerage firm Hall, Picornell, Ortigas & Company without the license required by the Central Bank. No costs shall be taxed in both instances.

Paras, C. J., Bengzon, Jugo, Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

CONCURRING:

REYES, J. B. L.,

I agree that under the facts of the instant case, no validating license from the Central Bank is required; but reserve my vote on the case of purchases of local securities by a non-resident, no such transaction being before the Court.

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