

VARGAS PLOW FACTORY, INC., PLAINTIFF-APPELLEE, VS. THE CENTRAL BANK OF THE PHILIPPINES, DEFENDANT-APPELLANT.

G.R. No. L-25732. February 27, 1969

Ponente: REYES, J.B.L., J.

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

Appeal from the decision of the Court of First Instance of Manila (in Civil Case No. 57582) on the legal issue of when the imposable margin levy on foreign exchange purchased from the Central Bank is collectible.

There is no controversy as to the facts of this case.

To cover the cost of steel blades, bolts and rivets it was importing from Germany, the Vargas Plow Factory, Inc., applied with the Philippine National Bank for free market letters of credit, which were granted, as follows:

L/C Number Date Face Value

613457-FM Sept. 22, 1961 \$10,820.00

614728-FM Dec. 22, 1961 3,580.00

615103-FM Jan. 15, 1962 10,820.00

615104-FM Jan. 15, 1962 10,820.00

The Philippine National Bank, on behalf of the Vargas Plow Factory, in turn, applied with the Central Bank to purchase the "forward exchange" necessary to cover the above-mentioned letters of credit. The applications having been duly approved, the Philippine National Bank and the Central Bank executed Forward Exchange Contracts No. 10593, on December 15, 1961; No. 11018, on December 26, 1961; and No. 12576, on January 19, 1962.

Against the free market letters of credit opened by the Philippine National Bank, the foreign beneficiary (Stahlkontor Hahn Aktiengesellschaft of Dusseldorf, Germany) drew the following drafts:

L/C Number Date Amount

613457-FM Dec. 30, 1961 \$ 566.78

614728-FM Mar. 22, 1962 3,512.80

615103-FM Mar. 30, 1962 3,939.14

615103 -FM Apr. 11, 1962 6,880.86

615104 -FM Mar. 30, 1962 3,971.81

Apr. 11, 1962 6,848.19,

which drafts were accepted (by the importer) on January 30, 1962; June 4, 1962, May 25, 1962, July 3, 1962, December 6, 1962 and December 6, 1962, respectively,

The Central Bank thereupon charged and collected from the importer the sum of P11,642.65, as 15% margin levy on the foreign exchange covered by the drafts. The importer accordingly paid, but later demanded for the refund of the aforesaid amount of P11,642.65, claiming that its collection was not in accordance with law. And when it was denied, the importer raised the question of the validity of the collection of the margin levy on the involved foreign exchange before the Court of First Instance of Manila (Civil Case No. 57582).

On November 11, 1965, the court rendered judgment sustaining plaintiff's claim and ordering the defendant, Central Bank, to pay to the former the sum of P11,642.65, with legal interest thereon from the filing of the complaint until full payment of the obligation, plus attorneys' fees and costs. Defendant Central Bank thus interposed the present appeal.

There is here no dispute as to the legality and validity of Central Bank Circular No. 122,[1] imposing 15% margin fee on all sales of foreign exchange purchased to any bank or importer by the Central Bank. The controversy in this case, however, arose from the fact that, on January 21, 1962, the Central Bank issued its Circular No. 133 suspending the collection of margin fee on foreign exchange. The effect is that, while the letters of credit in question opened by the Philippine National Bank, as well as the contracts to purchase forward exchange (between the Philippine National Bank and the Central Bank), were issued or executed during the effectivity of Circular No. 122, or when the margin levy is still imposable, the drafts against said letters of credit were drawn and accepted by the importer when the collection of the margin fee had already been suspended. The point at issue, therefore, is whether the imposable margin fee becomes collectible upon the execution of the contract to purchase the foreign exchange, as claimed by appellant Central Bank, or upon payment of the creditor by the correspondent bank, as ruled by the court below.

The lower court, relying on the ruling in *Belman Cia, Inc. vs. Central Bank*, 104 Phil. 877, that there was no consummated sale of foreign exchange until payment of the amount in foreign currency to the creditor, held that the sales here in question occurred during the period of suspension of the margin levy by the Central Bank, and that, therefore, no margin fee was payable thereon.

At the time the decision of the court a quo was rendered (on November 11, 1965), the same was in accord with the prevailing jurisprudence. Subsequently, however (though the court below could not have anticipated it), this Court had occasion to re-examine the doctrine of the *Belman* case and allied adjudications, and overruled the same, on March 1, 1968, in the case of *Pacific Oxygen & Acetylene Co. vs. Central Bank*, G.R. No. L-21881, 22 S.C.R.A. 917. Therein, this Court reached the conclusion that Republic Act No. 2609, empowering the Central Bank to collect a margin fee "in respect of all sales of foreign exchange by the Central Bank and its authorized agent banks" (section 1, Republic Act 2609), as well as the Central Bank circulars implementing said law, made no distinction between perfected and consummated, or between executory and executed, sales. Under our Civil and Commercial Codes, a sale comes into existence upon its perfection by mutual consent,¹ even if the subject matter or the consideration has not been delivered,² barring law or stipulation to the contrary, that, in this case, does not exist. Additionally, the only sales of foreign exchange by the Central Bank, or its agent banks, are the ones made to the appellee herein (*Vargas Plow Factory, Inc.*), the acceptance of the exporter's drafts being in the nature of a recognition of the importer's act of assigning to the exporter, *Stahlkontor Hahn Aktiengesellschaft*, which issued said drafts, all or part of the foreign exchange previously sold to the appellant, *Vargas Plow Factory*, and paid for by the latter. Otherwise stated, in honoring the drafts issued by the exporter, the local bank did not sell dollars to said party, but merely caused the delivery to it of dollars previously sold to the appellee. The foreign exchange having been applied for by the appellee and sold to him by the bank, as shown by the documents, the opening of a

letter of credit in favor of Stahlkontor Hahn Aktiengesellschaft becomes ultimately but the result of a stipulation pour autrui that is in no way incompatible with the original sale of the foreign exchange to appellee herein. It follows that the true sale took place when the forward exchange contracts were executed in December, 1961, before the margin levy was suspended. Hence the margin fee was properly collected.

PREMISES CONSIDERED, the decision under appeal is reversed, and the complaint ordered dismissed. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Issued on March 15, 1961.

1 See Articles 1315, 1316, 1475, 1458, 1461, 1462, Civil Code of the Philippines

2 Kerr & Co. vs. Collector of Internal Revenue, 70 Phil. 36, 40.

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