

**PACIFIC OXYGEN & ACETYLENE COMPANY,
PLAINTIFF-APPELLEE, VS. CENTRAL BANK OF THE PHILIPPINES,
DEFENDANT-APPELLANT.**

G.R. No. L-21881. March 01, 1968

Ponente: FERNANDO, J.

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FERNANDO, J.:

In this suit for the recovery of a sum of money from defendant-appellant Central Bank, the sole legal issue before us, as before the lower court, is the validity "of the collection made by the defendant from the plaintiff in the amount of P30,839.49 constituting the margin fee for its commercial credit (letter of credit) in favor of the Independent Engineering Co. Inc., O'Fallon, Illinois, U. S. in the amount of \$ 63,964.00 which was increased later to \$67,874.00." [1] The lower court decided in favor of plaintiff. We do not see it that way and accordingly reverse the decision.

The facts as stated by the trial court were not in dispute. Its finding, moreover, cannot be controverted on appeal. Plain-tiff Pacific Oxygen and Acetylene Co. applied on Sept. 21, 1961 with the Philippine Trust Company, an agent of the Central Bank, for commercial credit in the amount of \$63,964.00 in favor of the Independent Engineering Co., Inc., -O'Fallon, a United States corporation located in Illinois, [2] to cover the shipment of a plant. The application was approved on October 4, 1961, with the Philippine Trust Company establishing an irrevocable letter of credit, [3] at the free market rate of P3.01875 to every dollar, the letter of credit expiring on February 1, 1962. The plaintiff also on September 21, 1961, applied with the Philippine Trust Company for the purchase of forward exchange in the same amount of \$63,964.00 and for the same purpose. [4] On October 5, 1961, the Philippine Trust Company applied with the Central Bank for the purchase of forward exchange in the amount of \$63,694.00 to cover its U.S. dollar commitment against the letter of credit opened under free market rate for the plaintiff. Then on October 6, 1961, the Central Bank in turn executed a forward exchange contract for the sale of foreign exchange in the said amount to be delivered on January 2, 1962. [5] On November 7, 1961, upon plaintiff's application, the letter of credit was amended to increase the amount by \$3,910.00 to cover the estimated freight and shipping charges, [6] to be followed as in the case of the original letter of credit with the purchase of forward exchange for a similar amount. On January 17, 1962, the Philippine Trust Company applied for the purchase of forward exchange with the Central Bank in the amount of \$71,617.02, of which \$67,874.00 would cover its U.S. dollar commitments against the letter of credit opened under free market rate for the plaintiff. Then the next day the Central Bank executed the corresponding forward exchange contract for the same amount to be delivered on March 17, 1962. [7]

On January 21, 1962, the Central Bank suspended the margin levy. On February 8, 1962, the Independent Engineering Co., Inc., O'Fallon, Illinois, U.S.A., the beneficiary, drew two drafts against said letter of credit in the sums of \$19,277.41 (Exh. A-5) and \$48,596.59 (Exh. A-6), and the Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois, correspondent of the Philippine Trust Company, Manila, honored the first draft on February 9, 1962, and the second draft on February 13, 1962, as shown by the debit advices on the same

dates addressed to Philippine Trust Company.[8] On February 18 and 23, 1962, the Philippine Trust Company sent to the plaintiff statements of account on the importation in which were included the 15% margin fee.[9] On March 14, 1962, the plaintiff paid under protest to the Central Bank, thru the Philippine Trust Company, the amounts of P22,058.84 and P8,780.65, or a total of P30,839.49, representing the 15% margin fee, the amount sought to be recovered.

The applicable law is Republic Act No. 2609, which insofar as pertinent, empowers the Central Bank "in respect of all sales of foreign exchange by [it] and its authorized agent banks, * * * to establish a uniform margin of not more than 40% over the bank's selling rates stipulated by the Monetary Board * * *".[10] After quoting the above legal provision, referring to the corresponding Central Bank circular that fixed the margin fee, and citing the doctrine in *Belman Cia., Inc. v. Central Bank of the Philippines*,[11] "that the date of such payment or delivery of the amount in foreign currency to the creditor determines whether such amount of foreign currency is subject to tax imposed by the government"[12] of the country issuing such letter of credit, the lower court rendered judgment in favor of the plaintiff and against the defendant ordering the refund of the above sum of P30, 839.49. A motion to set aside judgment by defendant Central Bank having been filed and thereafter denied, this appeal was taken.

The appeal, as earlier mentioned, possesses merit. The language of the law is clear. A margin fee may be collected from "all sales of foreign exchange by the Central Bank and its authorized agent banks, * * *". It was expressly found by the lower court: "On January 17, 1962, the Philippine Trust Company applied for the purchase of forward exchange with the Central Bank in the amount of \$71,617.02, of which \$67,874.00 to cover its U.S. dollar commitments against the letter of credit opened under free market rate for the plaintiff, and on the next day the Central Bank executed the corresponding forward exchange contract (No. 12145) for the same amount to be delivered on March 17, 1962 * * *".[13]

It is well-settled in our law that a contract of sale exists from the moment "one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent." [14] There is a perfection of such a contract "at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price" from which moment, "the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts." [15] It is a fair restatement of the prevailing principle in American law that an agreement by one party to sell and deliver, and by the other to purchase at a mentioned price and terms certain personal property on or before specified future date is a contract of sale and not an option.[16]

With the categorical finding in the decision appealed from that the purchase of the forward exchange by the Central Bank occurred on January 17, 1962, prior to the suspension of the margin levy on January 21, 1962, it cannot be denied that deference must be paid to the legal provision calling for a margin fee "in respect of all sales of foreign exchange by the Central Bank and its authorized agents * * *". From *Lizarraga Hermanos v. Yap Tico*, [17] this Court has steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible.[18]

As thus viewed, the fact that it was not until February 9 and 13, 1962, that the Continental Illinois National Bank and Trust Company honored the above drafts cannot therefore be controlling. The plain and explicit command of the law is too categorical to be misinterpreted. A contrary impression that might be yielded by *Belman Cia., Inc. v. Central Bank of the Philippines*, [19] dealing with the Seventeen (17%) percent excise tax cannot prove decisive of this controversy, as was erroneously held by the lower court. To the extent that there is an inconsistency between this decision and the *Belman* dictum, it cannot be considered authoritative, at least under the

circumstances as herein disclosed.

WHEREFORE, the appealed judgment is reversed. With costs against plaintiff-appellee.

Reyes, Acting C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.
Concepcion, J., on official leave.

[1] Decision, Record on Appeal, p. 247.

[2] Exhs. E and 1.

[3] Exh. F. ; Annex A-1, Complaint.

[4] Exh. 3.

[5] Exh. O.

[6] Exh. G.

[7] Exh. 2.

[8] Exhs. I and J.

[9] Exhs. A-4 and A-2.

[10] Republic Act No. 2609 reads as follows: "SECTION 1. The provision of any law to the contrary notwithstanding when and as long as the Central Bank of the Philippines subjects all transactions in gold and foreign exchange to licensing in accordance with the provisions of section seventy-four of Republic Act Numbered Two Hundred sixty-five, the Central Bank, in respect of all sales of foreign exchange by the Central Bank and its authorized agent banks, shall have authority to establish a uniform margin of not more than 40% over the Bank's selling rates stipulated by the Monetary Board under section seventy-nine of Republic Act Numbered Two hundred sixty-five, which margin shall not be changed oftener than once a year except upon the recommendation of the National Economic Council and the approval of the President. The Monetary Board shall fix the margin at such rate as it may deem necessary to effectively curtail any excessive demand upon the international reserve."

[11] G.R. No. L-10195, November 29, 1958, now found in 104 Phil. 877.

[12] Decision, Record on Appeal, pp. 252-253.

[13] Decision, Record on Appeal, p. 249.

[14] Article 1458, Civil Code of the Philippines.

[15] Article 1475, Civil Code of the Philippines.

[16] Cf. *Thompson v. Exchange Bldg. Co.*, 8 S. W. 2d 489 (1928).

[17] 24 Phil. 504 (1913).

[18] For the latest decision, reference is made to *People v. Mapa*, G.R. No. L-22301, August 30, 1967.

[19] 104 Phil. 877 (1958).

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