

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

G.R. No. L-23391. February 27, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

To cover shipments of various industrial machinery parts, the plaintiff, the Pacific Oxygen and Acetylene Company, on December 12 and 14, 1961, applied to the Philippine Trust Company for commercial credit in favor of the Independent Engineering Company, Inc. of O'Fallon, Illinois, USA. On the same dates, the Philippine Trust Company issued the letters of credit, 29092-FM for \$4,615.15 (exhibit C) and 29112-FM for \$8,354.30 (exhibit D), addressed to the Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois, USA, authorizing the latter to negotiate drafts drawn by the Independent Engineering Company, Inc. upon the plaintiff. Upon the opening of the said letters of credit, the plaintiff also applied to the Philippine Trust Company for the purchase of forward exchange in the same amounts and for the same purpose, said purchases evidenced by forward exchange contracts 00662 (exhibit 9) and 00678 (exhibit 10).

On December 13 and 14, 1961, the Philippine Trust Company applied to the defendant, the Central Bank of the Philippines, for the purchase of forward exchange to cover its US dollar commitments against letters of credit opened under the free market rate. The defendant approved said applications on December 14 and 18, 1961 in forward exchange contracts 10597 (exhibit 7) and 10671 (exhibit 8).

On January 21, 1962, the defendant issued Circular 133 providing for the suspension of the margin levy.

Subsequently, the Independent Engineering Company, Inc. drew the corresponding drafts against the letters of credit in the amounts of \$6,853.32, \$4,352.61 and \$1,500. The Continental Illinois National Bank and Trust Company honored and paid the drafts on February 23, 1962 (exhibit E), March 12, 1962 (exhibit F), and March 21, 1962 (exhibit G).

Upon receipt of the debit advice from the Continental Illinois National Bank and Trust Company, the Philippine Trust Company sent the plaintiff demand letters, asking the latter to remit to the former, as 15% margin fee, the amounts of P1,981.25 (exhibit O), P3,119.53 (exhibit N), and P684.31 (exhibit P), or a total of P5,785.09. On August 30, 1963, the plaintiff paid to the defendant, through the Philippine Trust Company, the margin fee of P3,119.53, and on September 3, 1963, the margin fees of P1,981.25 and P684.31, all under protest.

On September 30, 1963, the plaintiff filed a complaint against the defendant with the Court of First Instance of Manila for the refund of the amount of P5,785.09 it had previously paid, under protest, in the concept of margin fee, and for damages in the amount of P100,000.

In its complaint, the plaintiff contended that inasmuch as the Continental Illinois National Bank and Trust Company honored and paid the drafts drawn under the letters of credit to the Independent Engineering Company,

Inc. only in February and March, 1962, the sale of foreign exchange in this case should be considered as having taken place after the suspension of the margin fee on January 21, 1962, pursuant to the decision of this Court in *Belman Compañia Incorporada vs. Central Bank of the Philippines*[1] which held that

"The payment of the amount in foreign currency to the creditor by the bank or its agent or correspondent is necessary to consummate the contract. Hence, 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 the tax imposed by the Government of the country where such letter of credit was granted."

The plaintiff prayed that the collection of the margin fee in question by the defendant be declared illegal and invalid.

In its answer, the defendant argued that the sale of foreign exchange in this case, under the letters of credit covered by forward exchange contracts 10597 and 10671 between the defendant and the Philippine Trust Company for the account of the plaintiff, should be considered to have taken place on the dates of execution of the said forward exchange contracts - December 14 and 18, 1961. Said dates falling within the period of effectivity of the 15% margin fee, the defendant asserts that it had acted in accordance with the law when it required the plaintiff to pay the margin fee in the amount of P5,785.09.

On June 17, 1964, the lower court rendered judgment in favor of the plaintiff and against the defendant. The lower court ordered the defendant to return to the plaintiff the amount in controversy, but without damages, attorney's fees, interests, and costs.

Hence, this appeal by both parties.

The plaintiff-appellant maintains that the trial court erred "in not awarding damages, attorney's fees, interests and costs to the plaintiff."

The defendant-appellant, on the other hand, maintains that the lower court erred (1) "in holding that the sale of exchange under a letter of credit covered by a forward exchange contract takes place on the date of the payment or delivery of the amount in foreign currency to the creditor and not on the date the said forward exchange contract is executed;" (2) "in ap-plying the ruling laid down by the Supreme Court in the case of '*Belman Compañia Incorporada vs. Central Bank of the Philippines*, G.R. No. L-10195, November 29, 1958'", and (3) "in holding that the collection by defendant-appellant of the amount of P5,785.09 as margin fees from the plaintiff-appellant is invalid and illegal."

Resolution of the issue herein presented ultimately hinges on whether or not the 15% margin fee could properly be imposed upon the sales of foreign exchange in question. To be more precise, the point at issue is whether the imposable 15% margin fee became collectible upon the execution of the contracts to purchase the foreign exchange, or upon the payment or delivery of the amount in foreign currency to the creditor.

No dispute arises as to the authority of the Central Bank to impose and collect a margin fee on all sales of foreign exchange by the Central Bank itself or by its authorized agent banks. The clear mandate of section 1 of Republic Act 2609 calls for the collection of a margin fee on "all sales of foreign exchange by the Central Bank and its authorized agent banks."

The controversy proceeds from the fact that the Central Bank, on January 21, 1962, issued Circular 133 providing for the suspension of the margin levy. Thus, while the letters of credit in question opened by the Philippine Trust Company, as well as the forward exchange contracts between the Central Bank and the Philippine Trust Company for the account of the plaintiff, were issued or executed during the period when the margin levy was still imposable, the drafts against the said letters of credit were negotiated, honored and paid by the Continental

Illinois National Bank and Trust Company to the Independent Engineering Company, Inc. during the period when collection of the margin fee was suspended.

The determinative dates are December 14 and 18, 1961 - the dates of execution of forward exchange contracts 10597 and 10671 between the defendant and the Philippine Trust Company for the account of the plaintiff. Republic Act 2609 authorizing 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," as well as the Central Bank circulars implementing the said law, makes 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, even if the subject-matter or the consideration has not been delivered, barring law or stipulation to the contrary. 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. There is 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.

In the case at bar, the contracts of sale of foreign exchange existed and were outstanding from December 14 and 18, 1961, as revealed by the documents, exhibits 7 and 8. Said dates fall within the period of the effectivity of the 15% margin fee. Thus, the defendant contravened no law, and, in fact, none of its own rules and regulations, when it collected from the plaintiff the amount of P5,785.09 as margin fee.

Indeed, in a similar case between the same parties involving the same issue, we held as follows:

"With the categorical finding in the decision appealed from that the purchase of the forward exchange by [from 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 x x x.' From *Lizarraga Hermanos v. Yap Tico*, 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.

"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*, 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." [2]

And in *Vargas Plow Factory, Inc. vs. The Central Bank of the Philippines*, [3] this Court reiterated and emphasized the ruling in *Pacific Oxygen vs. Central Bank*, in the following words:

"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*, L-21881,

22 SCRA 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, even if the subject matter or the consideration has not been delivered, 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."

From what we have stated above, the conclusion becomes inevitable that the lower court's award of damages and attorney's fees to the plaintiff must be set aside.

ACCORDINGLY, the judgment appealed from is reversed insofar as it orders the defendant to return and pay to the plaintiff the amount of 5,785.09, and affirmed insofar as it absolves the Central Bank from the payment of damages and attorney's fees. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] 104 Phil. 881.

[2] Pacific Oxygen & Acetylene Company vs. Central Bank of the Philippines, L-21881, March 1, 1968, 22 SCRA 917, 921-922, per Fernando, J.

[3] L-25732, February 27, 1969, 27 SCRA 84, 87-88, per J.B.L. Reyes, J.

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