

REPUBLIC FLOUR MILLS, INC., PLAINTIFF-APPELLANT, VS. CENTRAL BANK OF THE PHILIPPINES, DEFENDANT-APPELLEE.

G.R. No. L-23642. August 31, 1979

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Appeal from the judgment of the Court of First Instance of Manila dismissing the complaint for the recovery of certain sums of money collected by the defendant as "margin fees" under Republic Act No. 2609, on purchases of foreign exchange for the payment of machinery and equipment, etc., used for the expansion of appellant's flour milling facilities.

The plaintiff-appellant, Republic Flour Mills, Inc., a domestic corporation with main offices at Pioneer Street, Pasig, Rizal, is the owner and operator of a wheat flour mill, with an annual capacity of 50,000 metric tons of flour. As a by-product of its milling operations, the appellant produces mill offals (pollard and bran) which it sells abroad as mill feed, the proceeds of all sales being surrendered to the Central Bank as foreign exchange received or earned by the appellant. On December 9, 1958, the appellant filed a request with the Central Bank for authority to expand the capacity of its flour mill by 40,000 metric tons annually,[1] and on February 7, 1959, it furnished the Central Bank with a detailed account of its foreign exchange requirement amounting to US\$949,889.87.[2] The Monetary Board, in its resolution of April 22, 1959, approved the application in principle subject to the following conditions:

"a) That the importation of the additional machinery and equipment shall be made subject to the prior valuation by the Industrial Engineer of the Central Bank;

"b) That payment for the full value of the said machinery and equipment shall be drawn exclusively from the proceeds of exportation of mill feed (pollard and bran)."[3]

On May 11, 1959, the appellant entered into a contract with the Thomas Robinson & Son Ltd. of Rochdale, in the County of Lancaster, England, for the purchase and sale and erection of a wheat flour mill costing US\$821,735.00, including freight and interests on deferred payments at 5-1/2 per centum per annum. The parties also stipulated therein that:

"2. (a) This contract to become effective and binding upon both parties once the Central Bank of the Philippines has confirmed its approval to the extension of the flour mill of the Purchasers by 40,000 tons of flour yearly and its commitment to make available foreign exchange to pay the purchase price hereunder as same is earned by the Purchasers by the export of their mill offals."[4]

A copy of this contract was submitted to the Central Bank on May 13, 1959.[5]

On June 12, 1959, the appellant entered into contracts with the Metropolitan-Vickers El. Export Co. Ltd. and the British Thomson-Houston Export Co. Ltd. for the purchase and sale of electrical equipment valued at US\$13,568.70,[6] and US\$37,040.00,[7] respectively. The said contracts similarly provided that it shall become

effective and binding upon the parties once the Central Bank has confirmed its approval to the extension of the flour mill and its commitment to make available foreign exchange to pay the purchase price. Copies of these contracts were submitted to the Central Bank on June 22, 1959.[8]

On June 15, 1959, the Central Bank notified the appellant's bank that, in accordance with the valuation report of its Industrial Engineer, the amount of US\$759,735.00 shall represent the C & F value of certain machinery and equipment enumerated therein, and that the valuation of the erection charges was withheld pending submission of the necessary papers.[9]

On July 3, 1959, the Central Bank authorized the appellant's bank to make available to the appellant the amount of US\$22,000.00 for the payment of erection charges of the additional flour mill equipment.[10]

On July 10, 1959, the Central Bank notified the appellant's bank that in accordance with the valuation report of its Industrial Engineer, the amount of US\$50,608.70 shall represent the full value of electrical equipment enumerated therein, and that the valuation of the rest of the machinery was withheld pending submission of the necessary invoices.[11]

On July 16, 1959, Republic Act No. 2609, referred to as the Margin Law, an Act authorizing the Central Bank to collect a margin fee of not more than 40% on sales of foreign exchange, was enacted by Congress. Pursuant thereto, the Central Bank issued Circular No. 95, dated July 17, 1959, fixing the margin fee at 25%,[12] and thereafter collected the sum of P341,945.37 as margin fees on the appellant's remittances of foreign exchange in payment of the machinery and equipment imported for the expansion of its mill facilities.[13]

On January 25, 1960, the appellant filed with the Central Bank an application for exemption from the payment of margin fees on said remittances and for the refund of the money theretofore paid,[14] but the Central Bank denied the application for exemption upon the ground that on July 16, 1959, the appellant did not have any outstanding obligation to pay foreign exchange to Thomas Robinson & Sons, Ltd., for the reason that the contract entered into by them, which would be the source of the obligation, was not approved by the Monetary Board, Central Bank of the Philippines, until October 27, 1959.[15] The appellant sought the reconsideration of this resolution, but the Central Bank denied the same.[16] Whereupon, the appellant filed an action against the Central Bank with the Court of First Instance of Manila, docketed therein as Civil Case No. 48868, for the recovery of the amounts of money paid to the Central Bank as margin fees. After trial, the court dismissed the complaint, saying:

"While the contracts, which involved payment of foreign exchange, were executed on May 13, and June 12, 1959, that is, prior to the approval of the Margin Law, it was specifically stated in each of them that 'x x x 2. (a) This contract to become effective and binding upon both parties once the Central Bank of the Philippines has confirmed its approval to the extension of the flour mill of the purchasers by 40,000 tons of flour yearly and its commitment to make available foreign exchange to pay the purchase price hereunder as same is earned by the purchasers by the export of their mill offals.' This paragraph was placed in each of the three contracts because the plaintiff knew that as the extension or expansion of the mill was approved by the defendant on April 22, 1959, only in principle it could not enter into any binding contract with the sellers without the defendant first confirming that approval and the 'commitment to make available foreign exchange to pay the purchase price' having been made only on July 27, 1959 (Annex 2, motion to dismiss), that is, after the Margin Law became effective, it is very clear that the plaintiff is not entitled to the exemption from the payment of the margin fee as provided by Republic Act No. 2609 in its Section 3, and the Monetary Board acted within the law in unanimously disapproving the request of the plaintiff for such exemption and the refund of the margin fee paid by it in the sum of P341,945.87." [17]

Hence, the present recourse. The appellant claims that the trial court erred in not finding that the remittance of foreign exchange to its suppliers in England, under its expansion contracts, was approved prior to the enactment

of Republic Act No. 2609. The appellant contends that the said contracts became effective upon fulfillment of the conditions stated in the Monetary Board's resolution of April 22, 1959, and confirmed by the Central Bank on July 3, 1959, when it ordered the release of US\$22,000.00 in payment of the erection charges of said machinery and equipment.

The Central Bank, upon the other hand, contends that in the said expansion contracts, the parties covenanted that the contracts shall become effective and binding once the Central Bank has confirmed its approval to the extension of the flour mill and its commitment to make available foreign exchange to pay the purchase price, and the said confirmation was made only on July 27, 1959, after the Margin Law took effect, when the terms of payment of said contracts were approved, so that the appellant is not entitled to the exemption asked for.

There is merit in the appellant's contention. The records of the case indicate that there had been fulfillment of the conditions set forth in the resolution of the Monetary Board, dated April 22, 1959, and that stipulated in the contracts entered into by the appellant with ROBINSON, VICKERS, and THOMSON, respectively, so that there were perfected and outstanding obligations before the Margin Law took effect.

Thus, the conditions set by the Monetary Board are as follows:

"a) That the importation of the additional machinery and equipment shall be made subject to the prior valuation by the Industrial Engineer of the Central Bank; and

"b) That payment for the full value of the said machinery and equipment shall be drawn exclusively from the proceeds of the exportation of mill feed (pollard and bran)."

The compliance with the first condition is evident from the letters of the Central Bank to the China Banking Corporation which reads, as follows:

"June 15, 1959

"China Banking Corporation

Manila

Subject: REPUBLIC FLOUR MILLS, INC.

VALUATION of Flour Mills

Machinery in the amount of \$759, 735.00 partially

covered by grant dated May 5, 1959. (T-59-57).

"Gentlemen:

"Please be informed that in accordance with the valuation report of our Industrial Engineer, the amount of \$759,735.00 shall represent the full value of the following:

Section 1 Silos, 10,000 ton cap. - - - - - ₱ 3,727.00

Section 2 Wheat Cleaning & Finishing - - - - - 32,692.00

Section 3 Screenings Grinding - - - - - 3,064.00

Section 4 Flour Mills and accessories - - - - - 120,288.00

Section 5 Motors, Starters & Drives - - - - - 25,763.00

Section 6 Flour Processing & Redressing - - - - 26,317.00

Section 7 Roll Grinding & Fluting Machine - - - - 4,740.00

Section 8 Iron Works & Sleeves for Filter

Dust Collectors - - - - - 6,889.00

Section 9 Spare Parts - - - - - 4,750.00

Section 10 Flour Silo Equipment - - - - - 15,523.00

Section 11 Material for Worm Conveyors - - - - 4,053.00

Section 12 Entoleters - - - - - 5,529.00

Total FOB - - - - - £253,335.00

Approximate C & F - - - - - \$759,735.00

"Valuation of the erection charges is being withheld pending submission of necessary papers.

"Please advise your client accordingly.

Very truly yours,

(SGD.) VIRGINIA YAPTINCHAY

x x x"[18]

"China Banking Corporation TS-8079

Manila July 10, 1959

Subject: REPUBLIC FLOUR MILLS, INC.

Partial Valuation of Electrical Equipment in the

amount of \$50,608.70 approved in principle

per our letter dated May 5, 1959 (T-59-57)

"Gentlemen:

"Please be informed that in accordance with the valuation report of our Industrial Engineer, the amount of \$50,608.70 shall represent the full value of the following:

One (1) oil immersed Metropolitan-Vickers

Transformer, 3,000 KVA, 3/60/34,

400/480V, with spare parts - - - - - \$13,568.70

One (1) lot Low Tension Switch-board

consisting of one (1) Incoming Low Tension

Board Isolator, Three 800/400 Amp.

Two-Tier Feeders, one 400 Amp. Spare Feeder

and Two-Main 3,000 Amp. 420?Vol Feeders - - - - 19,050.00

One (1) Lot Automatic Power

Factor Correction Equipment

consisting of two banks of 4-95

KVA condensers - - - - - 9,340.00

One (1) Lot Distribution

Switchboard, and Bus

Bar Overhead & Under-Floor Trunking

and Ducting - - - - - 8,650.00

Total - - - - - \$50,608.70

"Valuation of the rest of the machinery is being withheld pending submission of necessary invoices.

"Please advise your client accordingly.

Very truly yours,

(SGD.) VIRGINIA YAPTINCHAY

x x x"[19]

It is, thus, clear that there was a prior valuation of the machinery and equipment by the Industrial Engineer of the Central Bank consonant with the resolution of the Monetary Board, dated April 22, 1959.

There was, likewise, compliance with the second condition of said resolution of April 22, 1959. Miguel Silang Cruz, trade control examiner of the Central Bank, testifying for the defendant, declared that before they processed the application of the appellant they first verified that there are export proceeds from the sale of mill feed from where the money for the payment of the cost of the additional machinery and equipment will be drawn. His testimony reads:

"Mr. Evangelista:

Q According to Exhibit 1, the approval in principle of the application to import machinery was subject to the following conditions:

(a) That the importation of the additional machinery and equip-ment shall be made subject to the prior valuation by the Industrial Engineer of the Central Bank; and

(b) that payment for the full value of the said machinery and equipment shall be drawn exclusively from the proceeds of exportation of mill feed (pollard and bran). In connection with condition (b) did you request from the export department a certification of the exportation of the mill feed?

A Yes, sir. Before we processed the application we always asked for a confirmation of the export department.

Q I am showing to you Exhibit 11 purporting to have been issued by Mr. Rudolfo L. de la Rosa, technical assistant in charge, special studies division, to the technical assistant in charge, producers division, import department. Are you familiar with this document?

A Yes, sir.

Q I am showing to you this document marked Exhibit 10 which purports to be a memorandum issued by Mr. Filemon P. Mendoza, assistant director of the export department, dated June 30, 1959. Do you know this document?

A Yes, sir. As a matter of fact, I have my initial there."[20]

The memorandum, Exhibit "11", adverted to by the witness, reads as follows:

"TO : The Technical Assistant In-Charge, Producers Division Import Department

"FROM : The Technical Assistant In-Charge, Special Studies Division

"SUBJECT : REPUBLIC FLOUR MILLS, INC. - Request for release of a non-recurring exchange allocation of \$37,302.51 representing proceeds of its mill feeds export for the month of May, 1959, to be used in the purchase of its mill extension machinery.

"DATE : July 3, 1959

"With reference to your memorandum dated July 1, 1959, this is to inform you that our records reveal that the applicant-firm made a shipment of pollard and bran mill-feed under Export License No. 7757 on May 30, 1959 and negotiated on June 5, 1959, in the amount of \$37,302.51.

"(SGD.) RUDOLFO L. DE LA ROSA"

The memorandum, Exhibit "10", reads as follows:

"TO : The Import Department

FROM : The Export Department

SUBJECT: Republic Flour Mills, Inc.

DATE : June 30, 1959

"In connection with your memorandum on Republic Flour Mills, Inc. dated June 18, 1959, we are pleased to confirm the data on the export proceeds they have surrendered with the China Banking Corporation as follows:

"January - thru SS SHUNSIE MARU - \$ 61,643.56

February - thru SS NANKAI MARU 45,163.76

March - thru SS TOSAI MARU 37,792.50

April - thru SS BRAZIL MARU 30,133.28

Total \$174,733.10

"(Sgd.) FILEMON P. MENDOZA

Assistant Director"

There is, also, a confirmation by the Central Bank of its approval to the extension of the flour mill and its commitment to make available foreign exchange to pay the purchase price, prior to the enactment of the Margin Law, as shown by its letter to the China Banking Corporation, dated July 3, 1959, authorizing the agent bank to make available to the appellant the amount of \$22,000.00 for the payment of the erection charges of the additional flour mill equipment. The said letter reads, as follows:

"TS- 7932

July 3, 1959

"China Banking Corp.

Manila

Subject: REPUBLIC FLOUR MILLS, INC.

Valuation on erection charges in the amount of \$22,000.00

partially covered by grant dated

May 5, 1959 (T-59-57)

"Gentlemen:

"Please be informed that in accordance with the valuation report of our Industrial Engineer, you are hereby authorized to make available to your above-mentioned client, the amount of \$22,000.00 representing 100% drawings against the letter of credit opened for:

"Payment of erection charges of additional flour mill equipment.

"Please advice your client accord-ingly.

Very truly yours,

(SGD.) VIRGINIA YAPTINCHAY

Special Assistant to the Governor

Copy furnished:

Republic Flour Mills, Inc.

Pioneer Str., Highway 54

Pasig, Rizal."[21]

For sure, the release of \$22,000.00 for the payment of erection charges of the additional flour mill equipment is a partial liquidation of a contractual obligation, the erection of the machinery and equipment being a part of the appellant's contract with Thomas Robinson & Son, Ltd., and, therefore, a tacit, if not an express, recognition of a pre-existing contractual obligation. There being a pre-existing obligation payable in foreign exchange prior to the enactment of the Margin Law, the liquidation of such contractual obligation should be exempt from the payment of margin fees pursuant to Section 3 of Republic Act No. 2609 and Section 1-B of Central Bank Circular No. 95, dated July 17, 1959, which provides as follows:

"B. Payment of premiums by veterans on life insurance policies under the government of the United States.

"The margin shall not apply to the liquidation of drafts drawn under letters of credit nor of the contractual obligations calling for payment of foreign exchange issued, approved and outstanding as of July 16, 1959, the date Republic Act No. 2609 took effect, and the extension thereof with the same terms and conditions as the original contractual obligations: Provided, That the repayment of loans contracted by the government of the Philippines with foreign governments and/or private banks and the importation of machineries and equipment by provinces, cities or municipalities for the exclu-sive use in the operation of public utilities fully owned and maintained by them shall likewise be exempted from the margin hereinabove referred to."

The appellant, however, is estopped from claiming exemption from the payment of margin fees on its remittances

of foreign exchange in payment for the machinery and equipment used for the expansion of its flour milling facilities. In its letter to the Central Bank on July 3, 1959,[22] the appellant promised the Central Bank that:

"x x x we are committing ourselves to pay the said 40% marginal fee if and when Congress finally enacts said bill which may affect us." [23] (Underscoring supplied)

The Central Bank, having been persuaded by, and having relied upon, the promise of the appellant to pay margin fees, the latter may not now renounce its representations pursuant to the doctrine of promissory estoppel. Under this doctrine, "an estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice." [24]

WHEREFORE, the judgment dismissing the complaint should be, as it is hereby, affirmed. Costs against the appellant Republic Flour Mills, Inc.

SO ORDERED.

Barredo, (Chairman) and Guerrero*, JJ., concur.

Antonio and Aquino, JJ., in the result.

Abad Santos, J., took no part.

Santos, J., on leave.

[1] Exhibit "A".

[2] Exhibit "B".

[3] Exhibit "C".

[4] Exhibit "D".

[5] No. 9, Partial Stipulation of Facts, Record on Appeal, p. 333.

[6] Exhibit "E".

[7] Exhibit "F".

[8] Nos. 13 and 14, respectively, of Partial Stipulation of Facts, Record on Appeal, p. 334.

[9] Exhibit "G".

[10] No. 15, Partial Stipulation of Facts, Record on Appeal, pp. 334-335.

[11] Exhibit "H".

[12] Exhibit "I".

[13] Exhibits "4" and "4-A".

[14] Exhibit "5".

[15] Exhibits "6" & "7"; also Exhibits "K" and "15".

[16] Record on Appeal, p. 342.

[17] Id., p. 344.

[18] Exhibit "G".

[19] Exhibit "H".

[20] t.s.n., pp. 18-19.

[21] Record on Appeal, pp. 334-335.

[22] the same date when the Central Bank ordered the release of \$22,000.00 for the payment of the erection charges of the additional mill equipment.

[23] Exhibit "14".

[24] Ramos vs. Central Bank, L-29352, October 4, 1971, 41 SCRA 565, 588.

* Mr. Justice Juvenal K. Guerrero, a member of the First Division, was designated to sit in the Second Division.

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