

SY SUAN AND PRICE INCORPORATED, PETITIONERS, VS. PABLO L. REGALA, RESPONDENT.

G.R. No. L-9506. June 30, 1959

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

Appeal by certiorari against the decision of the Court of Appeals adjudging respondent Pablo L. Regala the sum of P6,998.85, with legal interest, said to be the unpaid balance due him from petitioners Sy Suan and Price Incorporated, as a result of their verbal contract whereby the said petitioners agreed to pay 10 % of the value of the licenses which respondent might obtain from the defunct Import Control Commission for the importation of industrial starch for candy manufacture, plus P500 as attorney's fees, and costs.

The facts of the case as found by the Court of Appeals are as follows:

"That on April 11, 1953, defendant Sy Suan, who was at the time president and general manager of his co-defendant [Price Incorporated] and owner of practically all the capital stock of said corporation, executed in favor of plaintiff a special power of attorney authorizing the latter to prosecute the former's applications for import licenses with the Import Control Office per Exhibit 'B.' At the time of the execution of the said power of attorney, defendants had pending in the Import Control Office the following applications: Application No. 001705 for industrial starch in the sum of \$16,477.34 filed on April 6, 1953 in the name of defendant, Price Incorporated; Application No. 001797 for industrial starch in the sum of \$21,678.48 filed on April 6, 1953 in the name of defendant Price Incorporated; and Application No. 001800 for industrial starch in the sum of \$15,778.11 filed on April 6, 1953 in the name of defendant Price Incorporated (Exh. 'A'). Pursuant to said special power of attorney, plaintiff followed up and prosecuted the above-mentioned applications with and through the different offices and divisions of the Import Control Office, conferring with the corresponding Import Control officials. On or about May 19, 1953, the Import Control Office issued the following licenses as a result of the effort made by the herein plaintiff: license No. 15030 on Application No. 001795; License No. 15029 of Application No. 001797; and License No. 15028 on Application No. 001800, the amount of which had been reduced to \$11,888.50.

"Shortly before the execution of the special power of attorney above referred to, plaintiff and defendant Sy Suan agreed verbally that plaintiff's services for securing the said licenses would be paid or compensated with ten (10%) per cent of the total value of the amounts approved on the said applications. On May 19, 1953, upon the release of the aforementioned licenses, defendants paid the plaintiff the sum of P3,000.00 on account of the latter's services."

Under the facts above set forth and from the briefs submitted, the main issue in this appeal is the validity of the parole contract of remuneration which petitioners assail as contravening public policy and interest, hence null and void ab initio.

Petitioners argue that the 10% commission sought by respondent and granted by the Court of Appeals is inimical to public policy in that it tends to increase the cost of production of candies which they manufacture; that this

increase will necessarily be passed on to the consuming public by way of increased prices, thus frustrating the avowed purpose of the government to lighten the burden of the people and to place essential consumers goods such as candies within the reach of the masses; that if the giving of 10% to intermediaries in the procurement of import licenses is sanctioned, this practice would serve as a deterrent, rather than an incentive, to the creation of new industries encouraged by the government, as it would syphon off a substantial percentage of the capital invested by the fledging industries to the private pockets of so-called "tenpercenters;" and that inasmuch as the granting of licenses depends solely upon the merits of each application, the intervention of such intermediaries would tend to influence and corrupt the judgment of the government agencies processing the application.

Against this argument, respondent claims that the contract in question is not violative of sound public policy; that a contract should not be declared void as against public policy except when the cases is clear and free from doubt and the injury to the public is substantial and not theoretical or problematical; that the usual and most important function of courts of justice is rather to maintain and enforce contracts than to enable parties thereto to escape their obligation on the pretext of public policy, unless it clearly appears that they contravene public right or public welfare; and that contracts, when entered into freely and voluntarily, should be enforced by courts of justice.

Upon careful consideration of the contentions of both parties, we find undeniable that the contract in question sought to be enforced by the respondent and assailed by petitioners as null and void for being against public policy, is what is commonly known as '10% contracts' which the press decries and the public condemns as inimical to public interest. We can take judicial notice that this kind of contract sprouted as a result of the controls imposed by the government on imports and dollar allocations, despite the enunciated government policy that applications for imports and foreign exchange should be considered and acted upon strictly on the basis of merit of each application and without the intervention of intermediaries, which policy is revealed by Sections 15 and 18 of Republic Act 650 which read:

"SEC. 15. The president may summarily bar firms or individuals from filing applications for import and/or from doing business in the Philippines for any of the following acts:

"1. * * *.

"2. * * *.

"3. The payment to any public official, directly or indirectly, of any fee, premium or compensation other than those allowed by laws or regulations, in connection with the issuance or granting of quota allocations or licenses."

"SEC. 18. The penalty or fine of not less than" two thousand pesos (P2,000) nor more than twenty thousand pesos (P20,000) or imprisonment of not less than two years nor more than five years, or both such fine and imprisonment at the discretion of the Court shall be imposed upon persons who may be found guilty of the following acts:

"1. * * *.

"2. * * *.

"3. The receiving or accepting by any public official or employee directly or indirectly, of fees, premiums or compensation of any kind other than those allowed by law or by the rules and regulations, for the performance of any act or service connected with the issuance of import license or quota allocation."

If the granting of import licenses or quota allocations depended solely upon the merits of each application, there being a prohibition to firms or individuals applying for such licenses or quota allocations from paying "to any public official, directly or indirectly, of any fee, premium or compensation other than those allowed by law or regulations, in connection with the issuance or granting of quota allocations or licenses," and these officials are equally prohibited from "receiving or accepting, directly or indirectly, of fees, premiums or compensations of any

kind other than those allowed by law or by the rules and regulations, for the performance of any act or service connected with the issuance of import license or quota allocation," certainly the intervention of intermediaries, such as herein respondent, would be unwarranted and uncalled for, as such intervention would not render an unmeritorious application deserving, nor undeserving applications meritorious, but would serve no other purpose than to influence, or possibly corrupt, in unmeritorious cases, the judgment of the public official or officials performing an act or service connected with the issuance of Import license or quota allocation—an eventuality which the law precisely sought to avoid.

The present case is similar to that of *Mathew S. Tee vs. Tacloban Electric & Ice Plant Co., Inc., et al.*, [*] L-11980, February 14, 1959. In that case, Mathew S. Tee was approached by the agents of the Tacloban Electric for him to secure dollar allocation from the Central Bank for the company, upon payment of the "standard fee" of 10% of the value of the allocation obtained. Tee filed the necessary papers, followed them up for six months, and finally obtained the allocation of \$243,500.00 for the company. Upon failure to collect his 10%, Tee filed the appropriate action with the Court of First Instance of Manila, where defendants moved to dismiss the complaint, which was granted, on the ground that the contract was null and void ab initio as being against public morals and public policy. On appeal, we sustained the dismissal and held that said contract was really contrary to good customs/public order and public policy. The doctrine laid down in that case is certainly applicable to the present, as both involve the collection of 10% of the value of the license that may have been obtained.

Respondent claims, however, that there is no evidence showing that the contract in question has violated any public policy. We do not agree to this, as the very contract in question is self-evident. As we have cited in the aforementioned case.

"It is a general rule that agreements against public policy are illegal and void. Under the principles relating to the doctrine of public policy, as applied to the law of contracts, courts of justice will not recognize or uphold any transaction which, in its object operation, or tendency, is calculated to be prejudicial to the public welfare, to sound morality, or to civic honesty. The test is whether the parties have stipulated for something inhibited by the law or inimical to, or inconsistent with, the public welfare. An agreement is against public policy if it is injurious to the interests of the public, contravenes some established interest of society, violates some public statute, is against good morals, ends to interfere with the public welfare or society, or as it is sometimes put, if it is at war with the interests of society and is in conflict with the morals of the time. An agreement either to do anything which, or not to do anything the omission of which, is in any degree clearly injurious to the public and an agreement of such a nature that it cannot be carried into execution without reaching beyond the parties and exercising an injurious influence over the community at large are against public policy. There are many things which the law does not prohibit, in the sense of attaching penalties, but which are so mischievous in their nature and tendency that on grounds of public policy they cannot be admitted as the subject of a valid contract. The question whether a contract is against public policy depends upon its purpose and tendency, and not upon the fact that no harm result from it. In other words, all agreements the purpose of which is to create a situation which tends to operate to the detriment of the public interest are against public policy and void, whether in the particular case the purpose of the agreement is or is not effectuated. For a particular undertaking to be against public policy actual injury need not be shown; it is enough if the potentialities for harm are present." (12 Am. Jur., pp. 662-664)

On the other hand, Articles 1306 and 1409 of the new Civil Code provide:

"ART. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they, may deem convenient provided they are not contrary to law, morals, good customs, public order, or public policy."

"ART. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy."

Wherefore, the decision of the Court of Appeals is hereby reversed, without costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, and Barrera, JJ., concur.

[*] Supra, p. 168.

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