

WESTMINSTER BANK, LIMITED, PLAINTIFF AND APPELLEE, VS. K. NASSOOR, INC., DEFENDANT AND APPELLANT.

G.R. No. 39593. November 27, 1933

Ponente: HULL, J.

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HULL, J.:

Plaintiff brought suit in the Court of First Instance of Manila on five bills of exchange which defendant had unconditionally accepted upon presentation of the same in Manila, P. I. The main features of this case were considered by this court in G. R. No. 38139, promulgated October 27, 1932.[1]

At the trial defendant contended that the Westminster Bank, Limited, is only the agent of the drawer of the bills of exchange in question, that plaintiff is not a holder in due course under the Negotiable Instruments Law, and that if the defendant has a claim for breach of a collateral contract, good as against the drawer, it could also be made available against the plaintiff.

When these bills of exchange were received by plaintiff from the drawer, the latter's current account was credited with the value of the bills of exchange and the loan account was debited. The drawer subsequently withdrew large amounts from its current account by checks. The bills of exchange were accompanied by documents showing a shipment of goods from Manchester, England, to defendant in Manila, and upon unconditional acceptance by defendant, the goods, which up to that time had been in the control of the plaintiff or its correspondents, were delivered to defendant and have presumably been sold in the due course of business.

Upon presentation of the bills of exchange at maturity payment was refused, due protest was made, and the present suit instituted.

After trial the court gave judgment for plaintiff as prayed for, and defendant brings this appeal with the following assignments of error:

"The lower court erred:

"1. In not holding that the Westminster Bank, Ltd. is the agent of N. Jureidini Ltd. for the collection of the drafts sued on marked Exhibits B, C, D, E and F.

"2. In holding that the plaintiff is a holder in due course of and with powers to sue in its own name and for its own account, on the drafts marked Exhibits B, C, D, E and F.

"3. In not holding that the defense in favor of K. Nassoor Inc. and available against N. Jureidini Ltd. must also be good and available against the Westminster Bank, Ltd.

"4. In declaring that the defendant is liable to pay the value of the drafts sued on in Philippine currency at the rate of exchange prevailing on the date of their respective maturities and not in pounds sterling as agreed upon between the parties."

The first three assignments of error were disposed of in the certiorari proceedings above referred to, and at the

trial and on this appeal no fact, convincing reason, or controlling authority was brought forward that would justify this court in changing its views relative thereto. The obligations of appellant as an unconditional acceptor, to appellee, the holder of said drafts, must be met.

The fourth assignment of error contains virtually two questions, namely, in what money should the judgment be expressed, and if expressed in pesos, what rate of exchange should be adopted.

As to the first question, the trial court properly followed the provisions of section 3 of Act No. 1045 and jurisprudence as laid down by this court in the cases of Gaspar vs. Molina (5 Phil., 197); Behn, Meyer & Co. vs. Rosatzin (5 Phil., 660); Molina vs. De la Riva (6 Phil., 12); Paterno vs. Solis (15 Phil., 153); and Lopez vs. Enriquez (16 Phil., 336).

As to the second question, the trial court adopted the rate of exchange between pesos and pounds sterling at the date of breach. As pounds sterling had depreciated in value very much between the date of breach and the date of judgment by the trial court, appellant claims that the rate of exchange at that time should apply. Since that time, pounds sterling have advanced to such a degree that if the rate were taken at the date the judgment finally becomes final, it would be to the benefit of appellee and to the serious detriment of appellant.

The English rule of the rate of exchange at the time of breach is clearly established, and the notes in the case of Di Ferdinando vs. Simon Smits & Company (89 L. J. K. B. N. S., 1039), set forth in 11 American Law Reports, Annotated, 358, show no uniformity in America on this question but indicates that the weight of American opinion follows the English rule.

It seems to us that the reasons for the rule that the plaintiff is entitled to have his damages assessed as of the date of the breach are sound. The changes in the value of the currency subsequent to the breach should no more be taken into consideration than a subsequent change in the value of the goods, the subject matter of the contract. Fixing the damages at the date of the breach, gives neither party an incentive to gamble on the future rate of exchange and thus tends to shorten the court proceedings.

We therefore believe the trial court was correct in adopting the rule that the rate of exchange in force at the time of breach governs.

The judgment appealed from is affirmed. Costs against appellant. So ordered.

Malcolm, Villa-Real, Abad Santos, and Imperial, JJ., concur.

[1] 57 Phil., 422.

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