

ONAPAL PHILIPPINES COMMODITIES, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND SUSAN CHUA, RESPONDENTS.

G.R. No. 90707. February 01, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This is an appeal by way of a Petition for Certiorari under Rule 45 of the Rules of Court to annul and set aside the following actions of the Court of Appeals:

- a) Decision[*] in Case CA-G.R. CV No. 08924; and
- b) Resolution[**] denying a Motion for Reconsideration

on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction and further ground that the decision is contrary to law and evidence. The questioned decision upheld the trial court's findings that the Trading Contract[1] on "futures" is a specie of gambling and therefore null and void. Accordingly, the petitioner (as defendant in lower court) was ordered to refund to the private respondent (as plaintiff) the losses incurred in the trading transactions.

In support of the petition, the grounds alleged are:

- 1) Article 2018 of the New Civil Code is inapplicable to the factual milieu of the instant case considering that in a commodity futures transaction, the broker is not the direct participant and cannot be considered as winner or loser and the contract itself, from its very nature, cannot be considered as gambling.
- 2) A commodity futures contract, being a specie of securities, is valid and enforceable as its terms are governed by special laws, notably the Revised Securities Act and the Revised Rules and Regulations on Commodity Futures Trading issued by the Securities and Exchange Commission (SEC) and approved by the Monetary Board of the Central Bank; hence, the Civil Code is not the controlling piece of legislation.

From the records, We gather the following antecedent facts and proceedings.

The petitioner, ONAPAL Philippines Commodities, Inc. (petitioner), a duly organized and existing corporation, was licensed as commission merchant/broker by the SEC, to engage in commodity futures trading in Cebu City under Certificate of Registration No. CEB-182. On April 27, 1983, petitioner and private respondent concluded a "Trading Contract". Like all customers of the petitioner, private respondent was furnished regularly with "Commodities Daily Quotations" showing daily movements of prices of commodity futures traded and of market reports indicating the volume of trade in different futures exchanges in Hongkong, Tokyo and other centers. Every time a customer enters into a trading transaction with petitioner as broker, the trading order is communicated by telex to its principal, Frankwell Enterprises of Hongkong. If the transaction, either buying or selling commodity futures, is consummated by the principal, the petitioner issues a document known as "Confirmation of Contract and Balance Sheet" to the customer. An order of a customer of the petitioner is supposed to be transmitted from

Cebu to petitioner's office in Manila. From Manila, it should be forwarded to Hongkong and from there, transmitted to the Commodity Futures Exchange in Japan.

There were only two parties involved as far as the transactions covered by the Trading Contract are concerned--the petitioner and the private respondent. We quote hereunder the respondent Court's detailed findings of the transactions between the parties:

"It appears from plaintiff's testimony that sometime in April of 1983, she was invited by defendant's Account Executive Elizabeth Diaz to invest in the commodity futures trading by depositing the amount of P500,000.00 (Exh. "A"); She was further told that the business is "profitable" and that she could withdraw her money anytime; she was furthermore instructed to go to the Onapal Office where she met the Manager, Mr. Ciam, and the Account Executive Elizabeth Diaz who told her that they would take care of how to trade business and her account. She was then made to sign the Trading Contract and other documents without making her aware/understand the risks involved; that at the time they let her sign "those papers" they were telling her that those papers were for "formality sake"; that when she was told later on that she made a profit of P20,480.00 in a span of three days in the first transaction, they told her that the business is "very profitable" (tsn, Francisco, March 14, 1985, p. 11).

On June 2, 1983, plaintiff was informed by Miss Diaz that she had to deposit an additional amount of P300,000.00 "to pay the difference" in prices, otherwise she will lose her original deposit of P500,000.00; Fearing the loss of her original deposit, plaintiff was constrained to deposit an additional amount of P300,000.00 (Exh. "B"); Since she was made to understand that she could withdraw her deposit/investment anytime, she not knowing how the business is operated/managed as she was not made to understand what the business was all about, she wanted to withdraw her investment; but Elizabeth Diaz, defendant's Account Executive, told her she could not get out because there are some accounts hanging on the transactions.

Plaintiff further testified that she understood the transaction of buying and selling as speculating in prices, and her paying the difference between gains and losses without actual delivery of the goods to be gambling, and she would like to withdraw from this kind of business, the risk of which she was not made aware of. Plaintiff further testified that she stopped trading in commodity futures in September, 1983 when she realized that she was engaged in gambling. She was able to get only P470,000.00 out of her total deposit of P800,000.00. In order to recover her loss of P330,000.00, she filed this case and engaged the services of counsel for P40,000.00 and expects to incur expenses of litigation in the sum of P20,000.00."[2]

A commodity futures contract is a specie of securities included in the broad definition of what constitutes securities under Section 2 of the Revised Securities Act.[3]

"Sec. 2. x x x:

(a) Securities shall include bonds, x x x, commodity futures contracts, x x x."

The Revised Rules and Regulations on Commodity Futures Trading issued by the SEC and approved by the Monetary Board of the Central Bank defines such contracts as follows:

"Commodity Futures Contract" shall refer to an agreement to buy or sell a specified quantity and grade of a commodity at a future date at a price established at the floor of the exchange.

The petitioner is a duly licensed commodity futures broker as defined under the Revised Rules and Regulations on Commodity Futures Trading as follows:

"Futures Commission Merchant/Broker" shall refer to corporation or partnership, which must be registered and licensed as a Futures Commission Merchant/Broker and is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and

that, in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee or secure any trade or contract that results or may result therefrom."

At the time private respondent entered into the transaction with the petitioner, she signed a document denominated as "Trading Contract" in printed form as prepared by the petitioner represented by its Branch Manager, Albert Chiam, incorporating the Rules for Commodity Trading. A copy of said contract was furnished to the private respondent but the contents thereof were not explained to the former, beyond what was told her by the petitioner's Account Executive Elizabeth Diaz. Private respondent was also told that the petitioner's principal was Frankwell Enterprises with offices in Hongkong but the private respondent's money which was supposed to have been transmitted to Hongkong, was kept by petitioner in a separate account in a local bank.

Petitioner now contends that commodity futures trading is a legitimate business practised in the United States, recognized by the SEC and permitted under the Civil Code, specifically Article 1462 thereof, quoted as follows:

"The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured, raised, or acquired by the seller after the perfection of the contract of sale, in this Title called "future goods".

There may be a contract of sale of goods, whose acquisition by the seller depends upon a contingency which may or may not happen."

Petitioner further argues that the SEC, in the exercise of its powers, authorized the operation of commodity exchanges to supervise and regulate commodity futures trading.[4]

The contract between the parties falls under the kind commonly called "futures". In the late 1880's, trading in futures became rampant in the purchase and sale of cotton and grain in the United States, giving rise to unregulated trading exchanges known as "bucket shops". These were common in Chicago and New York City where cotton from the South and grain from the Mid-west were constantly traded in. The name of the party to whom the seller was to make delivery when the future contract of sale was closed or from whom he was to receive delivery in case of purchase is not given in the memorandum (contract). The business dealings between the parties were terminated by the closing of the transaction of purchase and sale of commodities without directions of the buyer because his margins were exhausted.[5] Under the rules of the trading exchanges, weekly settlements were required if there was any difference in the prices of cotton between those obtaining at the time of the contract and at the date of delivery so that under the contract made by the purchaser, if the price of cotton had advanced, he would have received in cash from the seller each week the advance (increase) in price and if cotton prices declined, the purchaser had to make like payments to the seller. In the terminology of the exchange, these payments are called "margins." [6] Either the seller or the buyer may elect to make or demand delivery of the cotton agreed to be sold and bought, but in general, it seems practically a uniform custom that settlements are made by payments and receipts of difference in prices at the time of delivery from that prevailing at the time of payment of the last weekly "margins". These settlements are made by "closing out" the contracts.[7] Where the broker represented the buyer in buying and selling cotton for future delivery with himself extending credit margins, and some of the transactions were closed at a profit while others at a loss, payments being made of the difference in prices arising out of their rise or fall above or below the contract price, and the facts showed that no actual delivery of cotton was contemplated, such contracts are of the kind commonly called "futures". [8] Making contracts for the purchase and sale of commodities for future delivery, the parties not intending an actual delivery, or contracts of the kind commonly called futures, are unenforceable.[9]

The term "futures" has grown out of those purely speculative transactions in which there are nominal contracts to

sell for future delivery, but where in fact no delivery is intended or executed. The nominal seller does not have or expect to have a stock of merchandise he purports to sell nor does the nominal buyer expect to receive it or to pay for the price. Instead of that, a percentage or margin is paid, which is increased or diminished as the market rates go up and down, and accounted for to the buyer. This is simple speculation, gambling or wagering on prices within a given time; it is not buying and selling and is illegal as against public policy.[10]

The facts as disclosed by the evidence on record show that private respondent made arrangements with Elizabeth Diaz, Account Executive of petitioner for her to see Mr. Albert Chiam, petitioner's Branch Manager. The contract signed by private respondent purports to be for the delivery of goods with the intention that the difference between the price stipulated and the exchange or market price at the time of the pretended delivery shall be paid by the loser to the winner. We quote with approval the following findings of the trial court as cited in the Court of Appeals decision:

"The evidence of the plaintiff tend to show that in her transactions with the defendant, the parties never intended to make or accept delivery of any particular commodity but the parties merely made a speculation on the rise or fall in the market of the contract price of the commodity, subject of the transaction, on the pretended date of delivery so that if the forecast was correct, one party would make a profit, but if the forecast was wrong, one party would lose money. Under this scheme, plaintiff was only able to recover P470,000.00 out of her original and "additional" deposit of P800,000.00 with the defendant.

The defendant admits that in all the transactions that it had with the plaintiff, there was (sic) no actual deliveries and that it has made no arrangements with the Central Bank for the remittance of its customers' money abroad but defendant contends in its defense that the mere fact that there were no actual deliveries made in the transactions which plaintiff had with the defendant, did not mean that no such actual deliveries were intended by the parties since paragraph 10 of the rules for commodity trading, attached to the trading contract which plaintiff signed before she traded with the defendant, amply provides for actual delivery of the commodity subject of the transaction.

The court has, therefore, to find out from all the facts and circumstances of this case, whether the parties really intended to make or accept deliveries of the commodities traded or whether the defendant merely placed a provision for delivery in its rules for commodity futures trading so as to escape from being called a bucket shop, x x x.

xxx xxx

x x x the court is convinced that the parties never really intended to make or accept delivery of any commodity being traded as, in fact, the un rebutted testimony of Mr. Go is to the effect that all the defendant's customers were mere speculators who merely forecast the rise or fall in the market of the commodity, subject of the transaction, below or above the contract price on the pretended date of delivery and, in fact, the defendant even discourages its customers from taking or accepting delivery of any commodity by making it hard, if not impossible, for them to make or accept delivery of any commodity. Proof of this is paragraph 10(d) of defendant's rules for commodity trading which provides that the customer shall apply for the necessary licenses and documents with the proper government agency for the importation and exportation of any particular commodity."[11]

The trading contract signed by private respondent and Albert Chiam, representing petitioner, is a contract for the sale of products for future delivery, in which either seller or buyer may elect to make or demand delivery of goods agreed to be bought and sold, but where no such delivery is actually made. By delivery is meant the act by which the res or subject is placed in the actual or constructive possession or control of another. It may be actual as when physical possession is given to the vendee or his representative; or constructive which takes place without actual transfer of goods, but includes symbolic delivery or substituted delivery as when the evidence of title to the goods,

the key to the warehouse or bill of lading/warehouse receipt is delivered.[12] As a contract in printed form, prepared by petitioner and served on private respondent, for the latter's signature, the trading contract bears all the indicia of a valid trading contract because it complies with the Rules and Regulations on Commodity Futures Trading as prescribed by the SEC. But when the transaction which was carried out to implement the written contract deviates from the true import of the agreement as when no such delivery, actual or constructive, of the commodity or goods is made, and final settlement is made by payment and receipt of only the difference in prices at the time of delivery from that prevailing at the time the sale is made, the dealings in futures become mere speculative contracts in which the parties merely gamble on the rise or fall in prices. A contract for the sale or purchase of goods/commodity to be delivered at future time, if entered into without the intention of having any goods/commodity pass from one party to another, but with an understanding that at the appointed time, the purchaser is merely to receive or pay the difference between the contract and the market prices, is a transaction which the law will not sanction, for being illegal.[13]

The written trading contract in question is not illegal but the transaction between the petitioner and the private respondent purportedly to implement the contract is in the nature of a gambling agreement and falls within the ambit of Article 2018 of the New Civil Code, which is quoted hereunder:

"If a contract which purports to be for the delivery of goods, securities or shares of stock is entered into with the intention that the difference between the price stipulated and the exchange or market price at the time of the pretended delivery shall be paid by the loser to the winner, the transaction is null and void. The loser may recover what he has paid."

The facts clearly establish that the petitioner is a direct participant in the transaction, acting through its authorized agents. It received the customers' orders and private respondent's money. As per terms of the trading contract, customers' orders shall be directly transmitted by the petitioner as broker to its principal, Frankwell Enterprises Ltd. of Hongkong, being a registered member of the International Commodity Clearing House, which in turn must place the customers' orders with the Tokyo Exchange. There is no evidence that the orders and money were transmitted to its principal Frankwell Enterprises Ltd. in Hongkong nor were the orders forwarded to the Tokyo Exchange. We draw the conclusion that no actual delivery of goods and commodity was intended and ever made by the parties. In the realities of the transaction, the parties merely speculated on the rise or fall in the price of the goods/commodity subject matter of the transaction. If private respondent's speculation was correct, she would be the winner and the petitioner, the loser, so petitioner would have to pay private respondent the "margin". But if private respondent was wrong in her speculation then she would emerge as the loser and the petitioner, the winner. The petitioner would keep the money or collect the difference from the private respondent. This is clearly a form of gambling provided for with unmistakable certainty under Article 2018 abovestated. It should thus be governed by the New Civil Code and not by the Revised Securities Act nor the Rules and Regulations on Commodity Futures Trading laid down by the SEC.

Article 1462 of the New Civil Code does not govern this case because the said provision contemplates a contract of sale of specific goods where one of the contracting parties binds himself to transfer the ownership of and deliver a determinate thing and the other to pay therefore a price certain in money or its equivalent.[14] The said article requires that there be delivery of goods, actual or constructive, to be applicable. In the transaction in question, there was no such delivery; neither was there any intention to deliver a determinate thing.

The transaction is not what the parties call it but what the law defines it to be.[15]

After considering all the evidence in this case, it appears that petitioner and private respondent did not intend, in the deals of purchasing and selling for future delivery, the actual or constructive delivery of the goods/commodity, despite the payment of the full price therefor. The contract between them falls under the definition of what is

called "futures". The payments made under said contract were payments of difference in prices arising out of the rise or fall in the market price above or below the contract price thus making it purely gambling and declared null and void by law.[16]

In England and America where contracts commonly called futures originated, such contracts were at first held valid and could be enforced by resort to courts. Later these contracts were held invalid for being speculative, and in some states in America, it was unlawful to make contracts commonly called "futures". Such contracts were found to be mere gambling or wagering agreements covered and protected by the rules and regulations of exchange in which they were transacted under devices which rendered it impossible for the courts to discover their true character.[17] The evil sought to be suppressed by legislation is the speculative dealings by means of such trading contracts, which degenerated into mere gambling in the future price of goods/commodities ostensibly but not actually, bought or sold.[18]

Under Article 2018, the private respondent is entitled to refund from the petitioner what she paid. There is no evidence that the orders of private respondent were actually transmitted to the petitioner's principal in Hongkong and Tokyo. There was no arrangement made by petitioner with the Central Bank for the purpose of remitting the money of its customers abroad. The money which was supposed to be remitted to Frankwell Enterprises of Hongkong was kept by petitioner in a separate account in a local bank. Having received the money and orders of private respondent under the trading contract, petitioner has the burden of proving that said orders and money of private respondent had been transmitted. But petitioner failed to prove this point.

For reasons indicated and construed in the light of the applicable rules and under the plain language of the statute, We find no reversible error committed by the respondent Court that would justify the setting aside of the questioned decision and resolution. For lack of merit, the petition is DISMISSED and the judgment sought to be reversed is hereby AFFIRMED. With costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Nocon, JJ., concur.

[*] Promulgated on June 30, 1989; Associate Justice Oscar M. Herrera, ponente, Associate Justices Lorna S. Lombos-de la Fuente and Fernando A. Santiago, concurring.

[**] Promulgated on October 24, 1989.

[1] Annex A of Petition; Rollo, pp. 25-29.

[2] Rollo, pp. 45-46.

[3] Batas Pambansa Blg. 178.

[4] See P.D. No. 902-A.

[5] *Lemonius, et al. vs. Mayer, et al.*, 14 So. 33 (1893).

[6] *Ibid.*, p. 34.

[7] *Ibid.*, p. 34

[8] *S.M. Weld & Co. vs. Austin*, 107 Miss. 279, 65 So. 247 (1914).

[9] *Ibid.*

[10] King vs. Quidwicks, 14 R. Is. 131, 138; Anderson vs. State, 58 S.E. 401 (1907); Henry Hentz & Co. vs. Booz, 70 S.E. 108 (1911).

[11] Rollo, pp. 49-50; 51-52; Records, pp. 180-181, 182.

[12] Black's Law Dictionary 515-516 (4th ed.).

[13] Plank vs. Jackson, 26 N.E. 568 (1891); Lemonius, et al. vs. Mayer, et al., supra, note 5.

[14] CIVIL CODE, Art. 1458.

[15] Schmid & Oberly, Inc. vs. R.J.L. Martinez Fishing Corporation, 166 SCRA 493 (1988).

[16] Supra, note 7.

[17] Supra, note 5.

[18] Ibid., p. 35.

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