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FIRST DIVISION

[G.R. No. L-44346. May 31, 1979]

INTERNATIONAL HARVESTER MACLEOD, INC., *petitioner, vs.* **THE COURT OF APPEALS and TANSIONG LIM,** *respondents.*

SYLLABUS

CIVIL LAW; CONTRACTS; VALIDITY; INFLUENCE PEDDLING. — Any agreement entered into because of the actual or supposed influence administrative or executive officers in the discharge of their duties, which contemplates the use of personal influence and personal solicitation rather than any appeal to the judgment of the officer on the merits of the object sought is contrary to public policy, and is null and void, and therefore, unenforceable before Court of justice. It was to give statutory imprimatur to public policy that Republic Act 3019, the Anti-Graft and Corrupt Practices Act was enacted on August 1, 1960.

APPEARANCES OF COUNSEL

Salcedo Del Rosario Bito Misa & Lozada for petitioner.
Basilio H. Alo for private respondent.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

This is a Petition for Review of the Decision of the Court of Appeals* affirming with modification the judgment, in respondent Tansiong Lim's favor, of the Court of First Instance of Bohol in an action for sum of money filed by petitioner against Lim.

The facts of the case are as follows:

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* Special First Division composed of C. Pascual, P. de Castro, and M. V. Agcaoili, *JJ.*

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On November 24, 1964, petitioner International Harvester Macleod, Inc. and private respondent Tansiong Lim entered into a dealership agreement (Exhs. "A", "B" and "C") whereby the latter was appointed dealer of the former in the island province of Bohol for the sale and service of International trucks and equipment and farm tractors. The dealership agreements had for their consideration discounts and terms laid down in petitioner's Schedule of Discounts and Terms of Dealership Applying to Goods Covered by Dealer Sales and Service Agreements (Exh. "D").

On September 14, 1965, petitioner filed a Complaint with prayer for Preliminary Writ of Attachment with the Court of First Instance of Bohol for the recovery of the sum of ₱76,806.88 allegedly due it from respondent Lim under their dealership agreement and which the latter had refused to pay in spite of repeated oral and written demands. It was then prayed that a Writ of Preliminary Attachment be issued against respondent Lim's properties as security for the satisfaction of any judgment that may be recovered; and that respondent Lim be ordered to pay the sum of ₱76,806.88, with interest from August 1, 1965 until fully paid, the sum of ₱19,000.00 as and for attorney's fees and the costs of suit.

On September 28, 1965, respondent Lim filed his Answer averring that he had asked for a liquidation of his accounts with petitioner, which the latter neglected to give him; that without such liquidation, he could not determine his indebtedness, if any; and that in the remote possibility that petitioner's demand is correct, he, nevertheless, has no obligation to pay the same for the reason that the former has monetary obligations to him which were much more than its claim. By way of counterclaim, respondent Lim alleged that as a consequence of the rigid import controls imposed by the Government, petitioner's dollar allocations had been reduced resulting in a tremendous decrease of its volume of sales in 1958; that in order to remedy the situation as it was expected that further reduction of its dollar allocations would be made the following year, petitioner's President, Mr. Paul Wood, asked him, prior to February 25, 1959, to bring to the attention of then President Carlos P. Garcia

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the detrimental effects of the import control on petitioner's business and on the entire nation; that on February 28, 1959, Mr. Wood delivered to him the letter dated February 25, 1959, giving him authority to meet President Garcia, together with a copy of General Letter No. 77 addressed to all employees of petitioner; that on the same date, Mr. Wood verbally promised to give him two percent of petitioner's volume of sales for the duration of the term of President Garcia, should its business improve as a result of his mission; that as a result of his intervention, petitioner's volume of sales increased in the ensuing fiscal years; and that, consequently, he is entitled to receive 2% of petitioner's total volume of sales from March 1, 1959 to December 31, 1961, when President Garcia's term of office expired. He then prayed for the dismissal of the Complaint, the payment of his share of 2% of petitioner's total volume of sales from March 1, 1959 to December 31, 1961, upon a determination of said amount, as well as the sums of ₱20,000.00 as moral damages and ₱5,000.00 as attorney's fees.

It appears that in a letter dated September 24, 1965, petitioner advised respondent Lim of the termination of their dealership agreement effective October 1, 1965. Consequently, respondent Lim filed a Supplemental Counterclaim against petitioner for the amount of ₱170,000.00 by way of damages by reason of the illegal termination of their dealership agreement.

In Its Answer to respondent Lim's counterclaims, petitioner denied knowledge of his agreement with Mr. Paul Wood regarding the payment of 2% of the total volume of its sales contending that the increase in its volume of sales was not due to respondent Lim's intervention as he had nothing to do with the management of its business; that not being a stockholder, he is not entitled to any percentage of its volume of sales; and that it has all the right to terminate their dealership agreement for violation thereof by respondent Lim.

On March 21, 1966, after the pre-trial, the trial Court issued a Resolution denying petitioner's Motion for dismissal of the Complaint without prejudice, as well as respondent's Motion to Dismiss for petitioner's non-appearance, and ordered

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respondent Lim to pay petitioner, within ninety (90) days from notice, the sum of ₱63,453.67, with interest at the legal rate. In an Order dated December 7, 1966, the Court *a quo* set aside the Resolution of March 21, 1966 and dismissed the Complaint and counterclaim with prejudice. However, in an Order dated May 26, 1967, the Resolution of March 21, 1966 was reinstated.

Thereafter, trial was held with respect to the other issues, including respondent Lim's counterclaim regarding the payment of his commission of 2% of petitioner's total volume of sales, pursuant to his agreement with Mr. Paul Wood.

On October 11, 1971, the trial Court rendered judgment, decreeing:

"In the light of all the foregoing, the Court renders judgment in the entire case as follows:

"DEFENDANT TANSIONG LIM SHALL PAY:

(a) To the Clerk of Court the docketing fee on defendant's permissive counterclaim, once determined how much;

(b) Inasmuch as the amount of ₱63,453.67 that resulted from the pre-trial is not yet executed, defendant Tansiong Lim is ordered, as part of this judgment, to pay the sum of ₱63,453.67 until it is fully satisfied and this amount shall be a lien on the judgment against International Harvester Macleod, Inc.; and

(c) Tansiong Lim's contract as dealer of plaintiff is declared terminated upon finality of this decision.

"PLAINTIFF INTERNATIONAL HARVESTER MACLEOD, INC.:

(a) Shall pay to defendant Tansiong Lim ₱1,838,096.09 representing two per cent (2%) of plaintiff's total volume of sales (which was ₱91,904,804.50), corresponding to the period from March 1959 to December 31, 1961, with legal interest at the rate of 6% per annum from October 1, 1965, until it is fully satisfied; and

(b) Shall pay to defendant Tansiong Lim ₱10,000.00 for the spare parts which were in Tansiong Lim's store and which are no

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longer usable due to natural occurrences, with legal interest of 6% per annum from December 6, 1965 until it is fully satisfied.

"Without pronouncement as to costs."

On appeal, respondent Court affirmed the above-quoted judgment with modification by requiring the payment of interest at the legal rate on the sum of ₱63,453.67 until the same shall have been fully satisfied; and by eliminating that portion requiring petitioner International Harvester Macleod, Inc. to pay private respondent Tansiong Lim the sum of ₱10,000.00 for spare parts.

Its Motion for Reconsideration of the Decision of the appellate Court having been denied, petitioner filed the present Petition, which was given course, raising the following questions of law:

"I

WHETHER OR NOT A CONFIDENTIAL ORAL AGREEMENT SUPPOSEDLY ENTERED INTO BY RESPONDENT LIM AND PETITIONER'S FORMER PRESIDENT, MR. PAUL WOOD (NOW *DECEASED) WHEREUNDER RESPONDENT LIM WAS ALLEGEDLY* PROMISED A 2% COMMISSION ON ALL OF PETITIONER'S SALES FOR AS LONG AS THE NOW LATE PRESIDENT CARLOS P. GARCIA IS THE INCUMBENT PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, IN THE EVENT RESPONDENT LIM, WHO CLAIMS *CLOSE ASSOCIATION AND INFLUENCE OVER* PRESIDENT GARCIA, SUCCEEDS IN PREVENTING A REDUCTION OR AT LEAST SHOULD BE ABLE TO MAINTAIN PETITIONER'S DOLLAR ALLOCATIONS IS *CONTRARY TO PUBLIC POLICY, GOOD CUSTOMS, PUBLIC ORDER, PUBLIC MORALS AND LAW* AS *IN FACT SIMILARLY FOUND BY THIS HONORABLE COURT* IN *TEE VS. TACLOBAN ELECTRIC COMPANY* (105, Phil. 168) AND *SY SUAN VS. REGALA* (105 PHIL. 1024) WHERE THE NOTORIOUS CONTRACTS COMMONLY KNOWN AS '*10% CONTRACTS*' WERE CONDEMNED AS INIMICAL TO PUBLIC INTEREST.

"II

WHETHER OR NOT SUCH AGREEMENT, WHICH IS CONTINGENT UPON SUCCESS, IS OF A NATURE *THAT TENDS TO MISCHIEF AND TO INJURE PUBLIC CONFIDENCE IN THE ADMINISTRATION OF JUSTICE AND HENCE,* AS GENERALLY HELD BY THE AUTHORITIES, WOULD BE CONTRARY TO PUBLIC

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POLICY, GOOD CUSTOMS, PUBLIC ORDER, PUBLIC MORALS AND LAW.

"III

WHETHER OR NOT A COURT CAN CONSIDER AS EVIDENCE DEPOSITIONS WHICH WERE INCOMPLETE SINCE THE EXHIBITS REFERRED TO THEREIN WERE NOT ATTACHED; WERE NEITHER MARKED AS EXHIBITS NOR WERE FORMALLY OFFERED IN EVIDENCE NOR WERE OPENED IN COURT THE PRESENCE OF THE PARTIES.

"IV

WHETHER OR NOT A DEPOSITION OF A WITNESS IS ADMISSIBLE IN EVIDENCE WHEN THE DEPONENT IS AVAILABLE TO TESTIFY AND IN FACT TESTIFIED IN OPEN COURT.

"V

WHETHER OR NOT THE CONCLUSION OF THE COURT OF APPEALS REGARDING THE EXISTENCE OF AN ORAL AGREEMENT INVOLVING THE PAYMENT OF ₱1.8 MILLION AS A COMMISSION IS CORRECT, PROPER OR JUSTIFIED IN THE LIGHT OF THE PLEADINGS OF THE PARTIES AND THE ADMITTED OR PROVEN FACTS OF THE CASE AND ESPECIALLY SO WHEN IT IS CONSIDERED (A) THAT THE CLAIM FOR ₱1.8 MILLION WAS INTERPOSED FOR THE FIRST TIME SIX (6) YEARS AFTER THE AGREEMENT WAS MADE AND ONLY THE FORM OF A COUNTERCLAIM AND (B) WHEN THE CONCLUSION AS TO THE EXISTENCE OF THE ORAL AGREEMENT WAS BASED SOLELY ON DEPOSITIONS WHICH ARE INADMISSIBLE."

In sustaining the validity of the agreement with respect to the payment of the 2% commission, respondent Court found no similarity between the case at bar and the cases cited by petitioner, *Tee vs. Tacloban Electric & Ice Plant Co., Inc. and Sy Suan vs. Regala*,[1] wherein this Court ruled that contracts providing for a 10% commission for securing import licenses or dollar allocations are null and void as being against public policy. Said respondent Court:

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[1] 105 Phil. 168, 1024 (1959).

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"x x x We find nothing against public policy in the agreement in question. Appellee Tansiong Lim was requested only to present the case of appellant, with the aid of certain documents, to the President, taking into account his accessibility to President Garcia whom he saw almost every Sunday. It is not Tansiong Lim's influence with President Garcia that induced his choice for the mission of making an appeal to the President against reduction of appellant's dollar allocation, for in arming him with documents to support the appeal, appellant did not rely on influence but on the merits of its case. If instead of Tansiong Lim, it was a high official of appellant who had gone to see President Garcia for the same mission and succeeded in presenting the appellant's case and obtaining the relief sought, there would seem to be nothing immoral or illegal in the act. As to the payment of the commission, it was but natural for Tansiong Lim, who is a mere dealer, not an official of the appellant company, to deserve and be entitled to some compensation.

"Neither was there anything inherently immoral in making the appeal to President Garcia with the objective of showing how detrimental is it for the economy for appellant's allocation to be reduced, affecting as it does also the well-being and livelihood of hundreds of employees and workers of appellant. The President has made a decision, and it is only to reconsider the decision to appellant's favor that the latter sought appellee's service for a fee. *This is not following up a dollar* quota application. It is to ask for a reconsideration of a policy decision laid down by the President. It is not suggested that the President was going to be shared in the 2% commission of Tansiong Lim as to taint the whole proceedings, within the contemplation of the agreement, *with impropriety that will make the agreement itself void* as against public morals or policy. The matter taken up with President Garcia comes within the legitimate exercise of his presidential prerogatives. No hint is given that his decision or action would be influenced by Tansiong Lim's closeness to him as a friend, much *less by money consideration. Hence, the agreement is neither void* as against public policy in general, nor as against the spirit of the Anti-Graft Law, which incidentally, was not yet in force when the agreement was forged."

We find it difficult to uphold the above-observations of respondent Court.

It is true that protests against the policy of the Monetary Board reducing dollar allocations were filed by alien importers

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and that the protests filed by American importers, which included petitioner, were denied by President Garcia, as may be gleaned from the following statements appearing in the February 23, 1959 issue of the Official Gazette, reading thus:

"February 20, PRESIDENT GARCIA announced today he will give the Central Bank time to act on protests against the reduction of dollar allocations for the current quarter of all alien importers, *except American importers.*" (italics supplied)

"The President received at Malacañang British Ambassador George Clutton, who verbally transmitted to him the protests of some members of the local diplomatic corps against the 'Filipino First Policy' in the grant of dollar allocations. The President also received officials and members of the International Chamber of Commerce who presented a resolution protesting against the policy adopted by the Monetary Board on January 5, 1959."[2]

The evidence for respondent Lim then is to the effect that as a consequence of rigid import controls imposed by the Government, the dollar allocation of petitioner had been reduced, resulting in a tremendous decrease in its volume of sales in 1958, and that in a meeting he had with petitioner's President and General Manager, Mr. Paul Wood, on February 25, 1959, the latter promised to give him a commission of 2% of petitioner's total volume of sales should he succeed in having petitioner's dollar allocation improved or, at least, maintained, for the duration of the term of then President Carlos P. Garcia. Thus, as respondent Court itself stated in its Decision, respondent Lim's counterclaim was based on an oral agreement he had with Mr. Paul Wood whereby he (Lim) would use his personal influence and association with President Garcia to improve or, at least, maintain petitioner's dollar allocation. Respondent Lim himself admits that the fact that he was a close friend of President Garcia might have been one of the considerations taken into account by petitioner in entreating him to undertake the job of bringing the matter of its disastrous condition to the attention of the President.[3]

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[2] Official Gazette, Vol. No. 8, p. 1; Record on Appeal, p. 265.

[3] p. 3, Brief for Private Respondent.

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There is also evidence to show that Mr. Paul Wood had wanted to see respondent Lim as early as October, 1958 (Exhibit "42"). However, the meeting between the two did not materialize until sometime in the third week of February, 1959, when Mr. N. L. Valeriano, who was also one of petitioner's dealers, conveyed to respondent Lim Mr. Wood's urgent desire to have a conference with him on February 25, 1959. The conference on February 25, 1959 must have been prompted by President Garcia's denial, on February 20, 1959, of the protests filed by American importers against the reduction of their dollar allocations.

It must be conceded that Mr. Paul Wood armed respondent Lim with some documents to support his appeal to the President to improve or, at least, maintain petitioner's dollar allocations, to wit: Exhibit "24", which is a letter of Mr. Wood to respondent Lim expressing his wish that President Garcia would read petitioner's General Letter No. 77 (Exhibit "26") addressed to its dealers informing them of the reduction of its dollar allocations for the first quarter of 1959 by 30.9%, resulting in its inability to meet service parts requirements of dealers and customers; Exhibit "25", which is petitioner's Memorandum to its employees informing them of the reduction of employment and sales as a consequence of its reduced dollar allocations; and Exhibit "27", which is a brochure showing that petitioner's retail business is handled solely by Filipino dealers whose employees are all Filipinos. Evidently, said documents, on their face, tend to support petitioner's appeal for the maintenance or improvement of the latter's dollar allocations. In other words, having failed in its attempt to obtain a reconsideration of the policy of the Monetary Board reducing the dollar allocations of American importers, petitioner then sought the aid of respondent Lim, who could see President Garcia "anytime,"[4] for the purpose of using Lim's influence to convince the latter to improve, or, at least maintain petitioner's dollar allocation.

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[4] T.s.n. December 16, 1970, p. 39.

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We find as untenable the finding that the circumstances obtaining herein are dissimilar to the factual setting in *Sy Suan vs. Regala, supra*, wherein it was succinctly stated:

"x x x (S)uch 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."

As announced by then President Garcia, the protests of American importers against the reduction of their dollar allocations were not to be entertained. The approach by respondent to President Garcia could not but be for any other purpose but to influence him through personal connections to make an exception in petitioner's case. Clearly, an agreement to this effect should be declared as against public policy. Any agreement entered into because of the actual or supposed influence which the party has, engaging him to influence administrative or executive officers in the discharge of their duties, which contemplates the use of personal influence and personal solicitation rather than any appeal to the judgment of the officer on the merits of the object sought, is contrary to public policy.[5]

Nor can we agree with the appellate Court's observation that the cases of *Tee vs. Tacloban Electric & Ice Plant Co., Inc.* and *Sy Suan vs. Regala* are not applicable to the case at bar as it does not involve following up of dollar allocations. The fact that respondent Lim's mission, for which he was promised a 2% commission, involved an appeal to President Garcia for a reconsideration of a policy decision reducing petitioner's dollar allocations does not make the present case essentially different from the above-cited cases. The doctrines enunciated in said two cases that public interest demands that

[5] 17 Am Jur 2d p. 579.

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applications for foreign exchange be considered, acted upon or disposed of strictly on the basis of the merits and demerits of each case, without the intervention of intermediaries, and that the exigencies of public welfare require that proceedings for the determination of such applications be conducted in the most impersonal and impartial manner to forestall favoritism or the commission of other irregularities in relation thereto or, at least to minimize the opportunities therefor or the possibility thereof, are equally applicable to the case at bar. In fact, even with more reason considering that reconsideration of the policy decision slashing the dollar allocations of alien importers, affecting as it did public interest, had to be applied uniformly without exception. That private respondent's "influence" with President *Garcia was the only causative factor that improved* petitioner's business in subsequent years has not been satisfactorily and convincingly proven.

Consequently, it is our considered opinion that the agreement between respondent Lim and petitioner is null and void, for being against public policy, and, therefore, unenforceable before a Court of justice. It was to give statutory imprimatur to such public policy that Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act, was enacted on August 17, 1960, *incorporating the following provision:*

"SEC. 4. *Prohibition on private individuals.* — (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word 'close personal relation' shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer."

The foregoing conclusion renders a determination of the other issues raised by petitioner unnecessary.

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WHEREFORE, the decision of the Court of Appeals is modified by eliminating the award in favor of respondent Lim in the amount of ₱1,838,096.09, representing 2% of petitioner's total volume of sales corresponding to the period from March, 1959 to December 31, 1961, but affirmed in all other respects.

No pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, and *Guerrero, JJ.*, concur.

De Castro, J., took no part.

SECOND DIVISION

[G.R. No. L-48827. May 31, 1979]

GERARDO D. ABE-ABE, FELICIANO MADRONA, LORETO VALDEHUEZA, MELECIO PEÑALOSA, PELAGIO BABIA, JUANITO TUMILAP, TIMOTEO CHAN, RICARDO BACOR, JESUS DORIA, VITELIANO DORIA, PABLO SIMITARA, VIRGILIO TARDE, POLICARPO RAGAS, EMILIANO EDULAN, DORICO LAGUNAY, FELICIANO MADRONA, JR., CARMEN L. BALBAS, SERVANDO TARDE, JOSE DAGONDON, ANGEL OCLARIT, ULDARICO BABIA, DIOGENES DIOLANTO, ARISTON BABAEL, LEONCIO DORIA, PLATON BACOR, LORETO DIZON, JORGE PAHILANGCO, JESUS BARLAAN, TELESFORO EDULAN, SEGUNDO JACULAN, ANTONIO BARCELONA, LORENZO SILAGAN, AGUSTIN PABELLORE, ISIDRO DAGOPLO, MAMERTO SIMITARA, CONRADO MAHINAY, BEN NUÑEZ, IGNACIA