Supreme Court E-Library

FIRST DIVISION

[G.R. No. L-49494. May 31, 1979]

NELIA G. PONCE and VICENTE C. PONCE, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, and JESUSA B. AFABLE,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; PROMISSORY NOTE; AGREEMENT TO PAY IN CURRENCY OTHER THAN PHILIPPINE LEGAL TENDER WHILE NULL AND VOID DOES NOT DEFEAT A CREDITOR'S RIGHT.** — While an agreement to pay in dollars is declared as null and void and of no effect, what Section 1 of Republic Act No. 529 (An Act to Assure Uniform Value to Philippines Coins and Currency) specifically prohibits is payment in currency other than legal tender. It does not defeat a creditor's claim for payment, as it specifically provides that "every other domestic obligation . . . whether or not any such provision as to payment is contained therein or made with respect thereto, shall be discharged upon payment in any coin or currency which at the time of payment is legal tender for public and private debts." A contrary rule would allow a person to profit or enrich himself inequitably at another's expense. The fact that the agreement between the parties originally involved dollar transaction and that the creditors expected to be paid in dollars, does not defeat the creditor's claim for payment, where it appears that the creditors do not insist on their agreement for payment of the obligation in dollars, but, on the contrary, are suing on the basis of the promissory note whereby the parties agreed to convert the dollar loan into Philippine currency, and that the note contains no provision "giving the obligee the right to require payment in a particular kind of currency," which is what is specifically prohibited by Republic Act 529.

2. **ID.; ID.; ID.; ID.; CREDITOR MAY RECOVER THE PESO EQUIVALENT OF THE OBLIGATION.** — Even if the parties really intended to provide for payment of the obligation in dollars, the creditors can still recover the amount in its peso equivalent. What is prohibited by Republic Act 529 is the

Supreme Court E-Library

payment of an obligation in dollars, meaning that creditor cannot oblige the debtor to pay him in dollars, even if the loan were given in said currency. In such a case, the indemnity to be allowed should be expressed in Philippine currency on the basis of the current rate of exchange at the time of payment.

APPEARANCES OF COUNSEL

Romeo L. Mendoza and Gallardo S. Tongohan for petitioners.

Ramon M. Velayo for private respondent.

DECISION

MELENCIO-HERRERA, *J.*:

This is a Petition for *Certiorari* seeking to set aside the Resolution of the Court of Appeals, dated June 8,1978, reconsidering its Decision dated December 17, 1977 and reversing the judgment of the Court of First Instance of Manila in favor of petitioners as well as the Resolutions, dated July 6, 1978 and November 27, 1978, denying petitioners' Motion for Reconsideration.

The factual background of the case is as follows:

On June 3, 1969, private respondent Jesusa B. Afable, together with Felisa L. Mendoza and Ma. Aurora C. Diño, executed a promissory note in favor of petitioner Nelia G. Ponce in the sum of ₱814,868.42, Philippine Currency, payable, without interest, on or before July 31, 1969. It was further provided therein that should the indebtedness be not paid at maturity, it shall draw interest at 12% per annum, without demand; that should it be necessary to bring suit to enforce payment of the note, the debtors shall pay a sum equivalent to 10% of the total amount due for attorney's fees; and, in the event of failure to pay the indebtedness plus interest in accordance with its terms, the debtors shall execute a first mortgage in favor of the creditor over their properties or of the Carmen Planas Memorial, Inc.

Supreme Court E-Library

Upon the failure of the debtors to comply with the terms of the promissory note, petitioners (Nelia G. Ponce and her husband) filed, on July 27, 1970, a Complaint against them with the Court of First Instance of Manila for the recovery of the principal sum of ₱814,868.42, plus interest and damages.

Defendant Ma. Aurora C. Diño's Answer consisted more of a general denial and the contention that she did not borrow any amount from plaintiffs and that her signature on the promissory note was obtained by plaintiffs on their assurance that the same was for "formality only."

Defendant Jesusa B. Afable, for her part, asserted in her Answer that the promissory note failed to express the true intent and agreement of the parties, the true agreement being that the obligation therein mentioned would be assumed and paid entirely by defendant Felisa L. Mendoza; that she had signed said document only as President of the Carmen Planas Memorial, Inc., and that she was not to incur any personal obligation as to the payment thereof because the same would be repaid by defendant Mendoza and or Carmen Planas Memorial, Inc.

In her Amended Answer, defendant Felisa L. Mendoza admitted the authenticity and due execution of the promissory note, but averred that it was a recapitulation of a series of transactions between her and the plaintiffs, "with defendant Ma. Aurora C. Diño and Jesusa B. Afable coming only as accommodation parties." As affirmative defense, defendant Mendoza contended that the promissory note was the result of usurious transactions, and, as counterclaim, she prayed that plaintiffs be ordered to account for all the interests paid.

Plaintiffs filed their Answer to defendant Mendoza's counterclaim denying under oath the allegations of usury.

After petitioners had rested, the case was deemed submitted for decision since respondent Afable and her co-debtors had repeatedly failed to appear before the trial Court for the presentation of their evidence.

Supreme Court E-Library

On March 9, 1972, the trial Court rendered judgment ordering respondent Afable and her co-debtors, Felisa L. Mendoza and Ma. Aurora C. Diño, to pay petitioners, jointly and severally, the sum of ₱814,868.42, plus 12% interest per annum from July 31, 1969 until full payment, and a sum equivalent to 10% of the total amount due as attorney's fees and costs.

From said Decision, only respondent Afable appealed to the Court of Appeals. She argued that the contract under consideration involved the payment of US dollars and was, therefore, illegal; and that under the *in pari delicto* rule, since both parties are guilty of violating the law, neither one can recover. It is to be noted that said defense was not raised in her Answer.

On December 13, 1977, the Court of Appeals* rendered judgment affirming the decision of the trial Court. In a Resolution dated February 27, 1978, the Court of Appeals denied respondent's Motion for Reconsideration. However, in a Resolution dated June 8, 1978, the Court of Appeals,** acting on the Second Motion for Reconsideration filed by private respondent, set aside the Decision of December 13, 1977, reversed the judgment of the trial Court and dismissed the Complaint. The Court of Appeals opined that the intent of the parties was that the promissory note was payable in US dollars, and, therefore, the transaction was illegal, with neither party entitled to recover under the *in pari delicto* rule.

Their Motions for Reconsideration having been denied in the Resolutions dated July 6, 1978 and November 27, 1978, petitioners filed the instant Petition raising the following Assignments of Error:

"I

THE RESPONDENT COURT OF APPEALS ERRED IN CONCLUDING THAT THE PROMISSORY NOTE EVIDENCING THE TRANSACTION

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* Special Fifth Division, composed of *JJ.* L. B. Reyes, M. V. Agcaoili and H.E. Gutierrez, *ponente*.

** Special Fourth Division, composed of *JJ.* L. B. Reyes, H.E. Gutierrez, *ponente*, and R.C. Climaco.

Supreme Court E-Library

OF THE PARTIES IS PAYABLE IN U.S. DOLLARS THEREBY DETERMINING THE INTENT OF THE PARTIES OUTSIDE OF THEIR PROMISSORY NOTE DESPITE LACK OF SHOWING THAT IT FAILED TO EXPRESS THE TRUE INTENT OR AGREEMENT OF THE PARTIES AND ITS PAYABILITY IN PHILIPPINE PESOS WHICH IS EXPRESSED, AMONG OTHERS, BY ITS CLEAR AND PRECISE TERMS.

"II

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT REPUBLIC ACT 529, OTHERWISE KNOWN AS 'AN ACT TO ASSURE UNIFORM VALUE TO PHILIPPINE COINS AND CURRENCY,' COVERS THE TRANSACTION OF THE PARTIES HEREIN.

"III

THE RESPONDENT COURT OF APPEALS ERRED IN NOT FINDING THAT PRIVATE RESPONDENT JESUSA B. AFABLE COULD NOT FAVORABLY AVAIL HERSELF OF THE DEFENSE OF ALLEGED APPLICABILITY OF REPUBLIC ACT 529 AND THE DOCTRINE OF IN *PARI DELICTO* AS THESE WERE NOT PLEADED NOR ADOPTED BY HER IN THE TRIAL.

"IV

THE RESPONDENT COURT OF APPEALS ERRED IN NOT FINDING, ASSUMING ARGUENDO THAT REPUBLIC ACT 529 COVERS THE PARTIES TRANSACTION, THAT THE DOCTRINE OF IN *PARI DELICTO* DOES NOT APPLY AND THE PARTIES AGREEMENT WAS NOT NULL AND VOID PURSUANT TO THE RULING IN *OCTAVIO A. KALALO VS. ALFREDO J. LUZ*, NO.-27782, JULY 31, 1970."

In the Resolution dated June 8, 1978, the Court of Appeals made the following observations:

"We are convinced from the evidence that the amount awarded by the lower Court was indeed owed by the defendants to the plaintiffs. However, the sole issue raised in this second motion for reconsideration is not the existence of the obligation itself but the legality of the subject matter of the contract. If the subject matter is illegal and against public policy, the doctrine of *pari delicto* applies.

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Supreme Court E-Library

"We are constrained to reverse our December 13, 1977 decision. While it is true that the promissory note does not mention any obligation to pay in dollars, plaintiff-appellee Ponce himself admitted that there was an agreement that he would be paid in dollars by the defendants. The promissory note is payable in U.S. dollars. The intent of the parties prevails over the bare words of the written contracts.

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"The agreement is null and void and *of no effect* under Republic Act No. 529. Under the doctrine of *pari delicto*, no recovery can be made in favor of the plaintiffs for being themselves guilty of violating the law."[1]

We are constrained to disagree.

Reproduced hereunder is Section 1 of Republic Act No. 529, which was enacted on June 16, 1950:

"Section 1. Every provision contained in, or made with respect to, any domestic obligation to wit, any obligation contracted in the Philippines *which provision purports to give the obligee the right to require payment in gold or in a particular kind of coin or currency other than Philippine currency or in an amount of money of the Philippines measured thereby, be as it is hereby declared against public policy, and null void and of no effect and no such provision shall be contained in or made with respect to, any obligation hereafter incurred.* The above prohibition shall not apply to (a) transactions were the funds involved are the proceeds of loans or investments made directly or indirectly, through *bona fide* intermediaries or agents, by foreign governments, their agencies and instrumentalities, and international financial and banking institutions so long as the funds are identifiable, as having emanated from the sources enumerated above; (b) transactions affecting high priority economic projects for agricultural, industrial and power development as may be determined by the National Economic Council which are financed by or through foreign funds; (c) forward exchange transactions entered into between banks or between banks and individuals or juridical persons; (d) import-export and other international banking, financial investment and industrial transactions. With the exception of the cases enumerated in items (a), (b), (c) and

[1] Pp. 24, 25 & 28, Petition, Annex "A".

Supreme Court E-Library

(d) in the foregoing provision, in which cases the terms of the parties' agreement shall apply, *every other domestic obligation heretofore or hereafter incurred, whether or not any such provision as to payment is contained therein or made with respect thereto, shall be discharged upon payment in any coin or currency which at the time of payment is legal tender for public and private debts*: Provided, That if the obligation was incurred prior to the enactment of this Act and required payment in a particular kind of coin or currency other than Philippine currency, it shall be discharged in Philippine currency measured at the prevailing rates of exchange at the time the obligation was incurred except in case of a loan made in a foreign currency stipulated to be payable in the same currency in which case the rate of exchange prevailing at the time of the stipulated date of payment shall prevail. All coin and currency, including Central Bank notes, heretofore and hereafter issued and declared by the Government of the Philippines shall be legal tender for all debts, public and private." (As amended by RA 4100, Section 1, approved June 19, 1964) (Italics supplied).

It is to be noted that while an agreement to pay in dollars is declared as null and void and of no effect, what the law specifically prohibits is payment in currency other than legal tender. It does not defeat a creditor's claim for payment, as it specifically provides that "every other domestic obligation x x x whether or not any such provision as to payment is contained therein or made with respect thereto, shall be discharged upon payment in any coin or currency which at the time of payment is legal tender for public and private debts." A contrary rule would allow a person to profit or enrich himself inequitably at another's expense.

As the Court of Appeals itself found, the promissory note in question provided on its face for payment of the obligation in Philippine currency, *i.e.*, ₱814,868.42. So that, while the agreement between the parties originally involved a dollar transaction and that petitioners expected to be paid in the amount of US $194,016.29, petitioners are not now insisting on their agreement with respondent Afable for the payment of the obligation in dollars. On the contrary, they are suing on the basis of the promissory note whereby the parties have already agreed to convert the dollar loan into Philippine currency at

Supreme Court E-Library

the rate of ₱4.20 to $1.00.[2] It may likewise be pointed out that the Promissory Note contains no provision "giving the obligee the right to require payment in a particular kind of currency *other than Philippine currency*," *which is what is specifically* prohibited by RA No. 529.

At any rate, even if we were to disregard the promissory note providing for the payment of the obligation in Philippine currency and consider that the intention of the parties was really to provide for payment of the obligation would be made in dollars, petitioners can still recover the amount of US $194,016.29, which respondent Afable and her co-debtors do not deny having received, in its peso equivalent. As held in *Eastboard Navigation, Ltd. vs. Juan Ysmael & Co. Inc.*, 102 Phil. 1 (1957), and *Arrieta vs. National Rice & Corn Corp.*,[3] if there is any agreement to pay an obligation in a currency other than Philippine legal tender, the same is null and void as contrary to public policy, pursuant to Republic Act No. 529, and the most that could be demanded is to pay said obligation *in Philippine currency. In other words, what is prohibited by* RA No. 529 is the payment of an obligation in dollars, meaning that a creditor cannot oblige the debtor to pay him in dollars, even if the loan were given in said currency. In such a case, the indemnity to be allowed should be expressed in Philippine currency on the basis of the current rate of exchange at the time of payment.[4]

The foregoing premises considered, we deem it unnecessary to discuss the other errors assigned by petitioners.

WHEREFORE, the Resolutions of the Court of Appeals dated June 8, 1978, July 6, 1978 and November 27, 1978 are hereby set aside, and judgment is hereby rendered reinstating the Decision of the Court of First Instance of Manila.

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[2] T.s.n., September 3, 1971, p. 40.

[3] 10 SCRA 79 (1964).

[4] *Kalalo vs. Luz*, 34 SCRA 337 (1970).

Supreme Court E-Library

No pronouncement as to costs.

SO ORDERED.

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

Makasiar, J., took no part.

FIRST DIVISION

[G.R. No. L-49496. May 31, 1979]

MD TRANSIT, INC., *petitioner, vs.* **THE HONORABLE COURT OF APPEALS* and SERGIO MARIANO (for himself and in representation of his minors SERGIO, JR. and MICHAEL all surnamed MARIANO),** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; COMPENSATORY DAMAGES; FACTORS TO DETERMINE AMOUNT OF AWARD. — The factors to be considered in determining the award of compensatory damages for lost earnings on account of death by wrongful act are: (1) life expectancy, which is not only relevant but also an important element in fixing the amount recoverable and (b) earning capacity, which is the net earning capacity or capacity of deceased to earn money, less the necessary expenses for his own living. Stated otherwise, the amount recoverable is not loss of the entire earning, but rather the loss of that portion of the earnings which the beneficiary would have

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* Ninth Division composed of then Court of Appeals Associate Justice Pacifico P. de Castro (now a member of this Court) and Associate Justices Samuel F. Reyes and Carlos L. Sundiam, *ponente*.