

FRANCISCO ARMALUUK, Plaintiff

v.

MARTIN MEREB, Defendant

Civil Action No. 39-74

Trial Division of the High Court

Palau District

May 8, 1975

Action by District Public Defender's Representative for payment under contract with private party, under which he had performed legal services in private civil suit. The Trial Division of the High Court, Hefner, Associate Justice, held that the contract was illegal and unenforceable under code section prohibiting a public employee from engaging in outside employment not compatible with his position.

1. Contracts—Construction—Signatures

Where defendant signed instrument under which plaintiff would represent defendant in a lawsuit brought by defendant and under which plaintiff would receive five percent of any amount received by defendant, an express agreement was entered into and would be enforced unless enforcement was prohibited by law, notwithstanding defendant's claim that though he signed the agreement he did not read it or agree to its terms.

2. Contracts—Construction—Signatures

One is presumed to understand and agree to that which he signs.

3. Public Officers—Conflict of Interest

Where District Public Defender's Representative agreed to handle, for a fee, a civil action brought by a private party, his services under the agreement were incompatible with the discharge of his responsibilities as Public Defender's Representative and in violation of code section providing that a government employee shall not engage in outside employment not compatible with the full and proper discharge of the responsibilities of his office or position or otherwise prohibited by law. (61 TTC § 11)

4. Public Officers—Conflict of Interest

Code section prohibiting a government employee from engaging in outside employment or other outside activity not compatible with the full and proper discharge of the responsibilities of his office or position or otherwise prohibited by law applies to persons on leave. (61 TTC § 11)

5. Contracts—Void Contracts—Particular Contracts

Where District Public Defender's Representative contracted to handle, for a fee, private person's lawsuit, and his services thereunder were in violation of code section prohibiting a government employee from engaging in outside employment not compatible with the full and proper

discharge of the responsibilities of his position, the contract was illegal and void. (61 TTC § 11)

6. Contracts—Void Contracts—Generally

An agreement which violates a statute or cannot be performed without violating a statute is illegal and void.

7. Contracts—Illegal Contracts—Generally

An agreement to do an illegal act is itself illegal.

8. Contracts—Illegal Contracts—Particular Contracts

That District Public Defender's Representative and person with whom he contracted to handle private lawsuit may not have known about code section making it illegal for the Public Defender's Representative to perform such a service was immaterial with respect to legality of the contract, which the code section made illegal and void. (61 TTC § 11)

9. Contracts—Breach—Damages

Where District Public Defender's contract to perform legal services for private party was illegal, void and unenforceable under code section prohibiting a public employee from engaging in outside employment not compatible with his position, and the services had been performed and \$15 or \$20 had been paid it would be unconscionable to allow private party to recover such sum in Public Defender's Representative's action for payment for services, and, the contract being unenforceable, plaintiff could not recover, and court would leave the parties, which were equally at fault, where it found them. (61 TTC § 11)

Assessor:

BENJAMIN N. OITERONG, *Associate Judge, District Court*

Interpreter:

AMADOR D. NGIRKELAU

Reporter:

SAM K. SASLAW

Plaintiff's Counsel:

JONAS W. OLKERIIL

Defendant's Counsel:

MARIANO W. CARLOS

HEFNER, *Associate Justice*

The plaintiff filed suit against the defendant for counsel fees pursuant to an agreement submitted into evidence as Plaintiff's Exhibit 1.

The evidence is clear that the plaintiff represented the defendant in a High Court Civil Action No. 605 (Palau District) and the judgment was in the defendant's favor. As a result, he received \$7,000.00 as a loan from the Angaur Special Fund. Plaintiff's Exhibit 1 is also clear.

The plaintiff was to receive five (5%) per cent of the amount received or \$350.

[1, 2] The defendant admits signing Plaintiff's Exhibit 1 but professes to have not read it or agreed to the terms therein. Defendant's position cannot be sustained. One is presumed to understand and agree to that which he signs. 17 Am.Jur.2d pp. 357-358.

It is also found that even prior to the plaintiff's services, a conversation took place between the plaintiff and defendant where the plaintiff told defendant he would charge \$50.00 if defendant lost the case and five (5%) per cent of the amount defendant received if he won Civil Action No. 605.

It is therefore concluded that an express agreement was entered into by plaintiff and defendant and if the contract is to be given legal effect, defendant owes plaintiff \$350.

The crucial issue in this matter is the interpretation and effect of 61 TTC § 11. This statute became effective April 12, 1972. There is no dispute that the agreement between the parties and the services rendered were after that date.

The plaintiff, the Palau District Public Defender's Representative, has submitted proof that he was on leave from June 25, 1973 to June 29, 1973 and therefore claims that he could serve as a trial assistant and collect a fee notwithstanding 61 TTC § 11. The defendant claims that the section prohibits the plaintiff from collecting a fee for services rendered which are within the scope of his official responsibilities.

The Trust Territory Manual of Administration, Part 115, describes the scope of the official responsibilities of the Public Defender's Office. Paragraph I, in part, states:

The office is charged with the administration of a public defender system in the Territory and accordingly provides assistance

and counsel to persons involved in criminal and civil proceedings and who do not have such assistance and counsel available.

Paragraph II of Part 115 lists in more detail the type of cases the Public Defender's office shall handle. In civil cases, the office is to provide legal counsel to any persons who require a defense and to represent persons in civil actions where the Government is an adverse party. Nothing is said about representation of plaintiffs in civil cases where the Government is not a party.

Title 61, Section 11, paragraph (1) prohibits a government employee from engaging "in outside employment or other outside activity not compatible with the full and proper discharge of the responsibilities of his office or position or otherwise prohibited by law." Thereafter, the section describes six different circumstances which shall be deemed incompatible with the discharge of the employee's responsibilities.

[3] This Court finds and therefore holds that the actions and outside activities of the plaintiff were incompatible with the discharge of his responsibilities.

The Public Defender's office has a special place in the governmental structure. Although it is funded by governmental funds it must retain its independence for professional and ethical reasons. The office primarily renders services to defendants in criminal cases but, on occasion, represents clients against the Trust Territory Government. Although a literal interpretation of Manual of Administration, Part 115 would seem to indicate the Public Defender or his representative shall not represent a plaintiff in a civil case where the government is not a party, this does not mean that the plain import and intent of 61 TTC § 11 must be ignored.

[4] By the very nature of being a Public Defender's Representative, the plaintiff becomes known in the commu-

nity and his proficiency as a trial assistant is gained by his governmental experience. His very position, training and the physical facilities of the office makes it impossible for this Court to conclude that the plaintiff can separate himself from governmental service and render services for a fee that do not violate paragraph (1) of Section 11. Subparagraphs (a) (use of public office for private gain); (d) (any loss of complete independence of impartiality); and (f) (any adverse effect on the confidence of the public in the integrity of the government) are violated by the activities of the plaintiff. In addition, paragraph (2) of Section 11 states that no government employee shall receive compensation for the performance of any activity during his service as such employee within the scope of his official responsibilities. The plaintiff may claim that the Manual of Administration, Part 115, does not specifically require the Public Defender's office to take plaintiff's cases in civil matters where the Government is not a party. However, this ignores the general authority granted in Paragraph I of Part 115 of the Manual of Administration inserted verbatim above. It is clear that the intent of Congress was to prohibit outside activities within the general scope of the employee's official responsibilities. The analogy argued by defense counsel is appropriate. A government doctor may take leave to perform plumbing services and receive a fee for the plumbing work he does but he may not take leave and perform medical services for a fee. Likewise, a trial assistant who works for the government to perform legal services and is not otherwise exempted by Title 61, may not take leave and receive a fee for providing legal services to a client.

It must be stressed that taking leave from the government does not terminate the relationship between the employee and the government. Here the plaintiff was still an employee and in fact was paid his regular salary while

representing the defendant. If 61 TTC § 11 is violated, taking leave with or without pay does not relieve the violation.

[5, 6] The question remains whether a violation of Section 11 makes the contract between the plaintiff and defendant illegal and void. Section 11 clearly makes such a contract for a fee invalid. It is well established that an agreement which violates a statute or which cannot be performed without violating such a statute is illegal and void. *Ewert v. Bluejacket*, 259 U.S. 129, 42 S.Ct. 442, 66 L.Ed. 858. *Mongami v. Melekeok Mun.*, 4 T.T.R. 217.

[7, 8] It is a proper legislative function to declare certain contracts against general policy and the agreements are subject to the paramount power of the Government. Since the legislative intent was to prohibit outside employment by the plaintiff in rendering legal services, it must be held that the contract which brings about results which the law seeks to prevent is unenforceable. 17 Am.Jur.2d p. 507. An agreement to do an illegal act is itself illegal. Here the intention of the agreement of the plaintiff and defendant conflicts with 61 TTC § 11 and therefore it will not be given effect. 17 Am.Jur.2d p. 509. *Wm. Lindeke Land Co. v. Kalman*, 190 Minn. 601, 252 N.W. 650, 93 A.L.R. 1393. The fact that the parties may not have known about 61 TTC § 11 is immaterial. 17 Am.Jur.2d p. 513.

[9] The last issue to be determined is the result of the void agreement between the plaintiff and defendant. It is uncontradicted that the plaintiff did perform services for the defendant and spent approximately three days in trial resulting in a favorable decision for the defendant. The defendant has benefited from the services of the plaintiff. The plaintiff received \$15 or \$20 from the defendant before the trial. Now that the plaintiff has performed the services, it would be unconscionable for the defendant to be able to recover the sums paid. This would be analogous, if not in

fact, the same as parties in pari delicto. Both parties are equally at fault—the plaintiff, for engaging in the prohibited services, and the defendant for using and benefiting from those prohibited services. In such a case, the law will leave the parties where it finds them. 17 Am.Jur.2d, p. 594–601. Therefore, any sums the defendant has paid the plaintiff shall remain the plaintiff's money.

It is therefore the Judgment of this Court that:

1. Plaintiff recover nothing from the defendant.
2. Any sums received by the plaintiff from defendant by virtue of their agreement shall be retained by plaintiff.
3. Neither party shall recover costs.