

**Maggie Faria TAIMANAO and
Norma Farinas
vs.
Kim An YOUNG**

**Appellate No. 85-9001
Civil Action No. 84-268
District Court NMI
Appellate Division**

Decided September 9, 1985

contract to change work locations the employment contract would be enforceable, notwithstanding the absence of government approval, by the workers under the theory of unjust enrichment, because the workers were not in pari delicto with the employer, but were instead the victims of manifest oppression.

**1. Contracts - Illegal -
Enforcement**

As a general matter, illegal contracts are invalid; however, the illegality of a contract does not automatically render it unenforceable.

**2. Contracts - Illegal -
Restitution**

Where a contract is invalid due to illegality, a performing party may recover in quasi-contract for unjust enrichment under certain circumstances.

**3. Contracts - Illegal -
Restitution**

It is the law in the Commonwealth that where the performing party is not in pari delicto, or not equally in the wrong with the other party, the performing party is entitled to restitution.

**4. Contracts - Illegal - In Pari
Delicto**

A party is regarded as being less in the wrong and not in pari delicto, where he or she has been the victim of oppression practiced on him or her by the other party.

**5. Contracts - Illegal -
Enforcement**

Where nonresident workers were forced under threat of a lawsuit for breach of

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IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

APPELLATE DIVISION

FILED
Clerk
District Court

SEP 09 1985

For The Northern Mariana Islands
By [Signature]
(Deputy Clerk)

MAGGIE FARIA TAIMANAO and)
NORMA FARINAS,)
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Plaintiff/Appellees,)
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vs.)
)
KIM AN YOUNG,)
)
Defendant/Appellant.)
_____)

DCA NO. 85-9001
CTC NO. 84-268

OPINION

Attorney for Appellant:

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BEFORE: LAURETA, DUENAS and WATERS*, District Judges

LAURETA, District Judge:

Facts

The facts as found by the trial court are not chal-
lenged on appeal. On September 15, 1983, the plaintiffs-appel-
lees, Maggie F. Taimanao and Norma Farinas, commenced working for
the defendant Kim Kwang Young on twelve-month employment con-
tracts. On November 14, 1983, Kim Kwang Young ordered both

*The Honorable Laughlin E. Waters, United States District Court,
Central District of California, sitting by designation.

1 plaintiffs to work for his brother, the defendant-appellant Kim
2 An Young, at Poppy's Night Club. After being threatened by Kim
3 Kwang Young with legal action for breach of contract if they did
4 not make the transfer, Taimanao and Farinas began working at
5 Poppy's. The appellees worked at Poppy's from November 14, 1983
6 until February 2, 1984 during which time they were required to
7 remain in their barracks or on the night club premises and were
8 forbidden to leave without the permission of Kim An Young.
9 During the entire time of employment at Poppy's, Kim An Young
10 paid only \$180.00 to each of the appellees.

11 The appellees brought this action in the Commonwealth
12 Trial Court for breach of contract. The trial court, the Honor-
13 able Robert A. Hefner presiding, found for the appellees and
14 entered judgment in the amount of \$842.40 for Taimanao and in the
15 amount of \$736.40 for Farinas plus liquidated damages in an equal
16 amount pursuant to 4 C.M.C. § 9243. Kim An Young timely filed
17 this appeal. Kim Kwang Young has not taken an appeal.

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Issue

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The appellant raises one issue on this appeal:

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Whether the trial court erred as a matter of
law in enforcing an illegal contract.

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Analysis

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3 C.M.C. § 4437(e) provides:

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No employer or non-resident worker shall
execute any contract, make any other agree-
ment, or change any existing contract, in

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1 writing or otherwise, regarding the employ-
2 ment of such worker, without the approval of
3 the Chief [of Labor], and no non-resident
4 worker shall perform labor or services within
the Commonwealth except pursuant to an
approved contract or an approved change to
this contract.

5 3 C.M.C. § 4437(f) provides:

6 No non-resident worker shall perform
7 services or labor within the Commonwealth for
8 any employer other than the employer for whom
the Chief has approved the contract with such
worker... .

9 It is undisputed that the appellees transferred to Poppy's
10 without the approval of the Chief of Labor. The appellant
11 contends that the appellees' contracts to work at Poppy's are
12 accordingly illegal and unenforceable.

13 [1-4] Appellant is correct in his assertion that as a general
14 matter illegal contracts are invalid. Pacific Telephone and
15 Telegraph Co. v. MCI Telecommunications Corp., 649 F.2d 1315,
16 1319 (9th Cir. 1981). However, "the illegality of a contract
17 does not automatically render it unenforceable." California
18 Pacific Bank v. Small Business Administration, 557 F.2d 218,
19 223-224 (9th Cir. 1977); see also Office and Professional Employ-
20 ees International Union, Local 2 v. Washington Metropolitan Area
21 Transit Authority, 552 F.Supp. 622, 632 (D.D.C. 1982) ("Some
22 illegal contracts, upon a balancing of the interests involved,
23 may be enforceable"), aff'd mem., 713 F.2d 865, 724 F.2d 133
24 (D.C. Cir. 1983). Where a contract is invalid due to illegality,
25 a performing party may recover in quasi-contract for unjust
26 enrichment under certain circumstances. J. Calamari and J.

1 Perillo, Contracts, pp. 20, 792-799 (2d Ed. 1970). It is the law
2 in the Commonwealth^{1/} that where the performing party is not in
3 pari delicto, or not equally in the wrong with the other party,
4 the performing party is entitled to restitution. Restatement
5 (Second) of Contracts § 198 (1979), comment b. A party is
6 regarded as being less in the wrong where he or she has been the
7 victim of oppression practiced on him or her by the other party.

8 Id.

9 [5] Here, the trial court found that the appellees were
10 forced under threat to transfer to Poppy's. Clearly, the appel-
11 lees had no say in the matter and cannot reasonably be viewed as
12 being of equal responsibility for the performance of an illegal
13 contract. Moreover, the oppression suffered by the appellees in
14 this matter is manifest. Pursuant to § 178 of the Restatement,
15 the appellees may properly recover in quasi-contract for unjust
16 enrichment. The judgment of the trial court is affirmed.

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25 ^{1/} The rules of common law as expressed in the Restatement of the
26 Law are the rules of decision in the courts of the Commonwealth.
7 C.M.C. § 3401.

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JUDGE ALFRED LAURETA



JUDGE CRISTOBAL C. DUENAS



JUDGE LAUGHLIN E. WATERS