

NAZARIO TRILLANA, ADMINISTRATOR AND APPELLEE, VS. QUEZON COLLEGE, INC., CLAIMANT AND APPELLANT.

G. R. No. L-5003. June 27, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

Damasa Crisostomo sent the following letter to the Board of Trustees of the Quezon College:

June 1, 1948

"THE BOARD OF TRUSTEES

"Quezon College

"Manila

"Gentlemen:

"Please enter my subscription to dalawang daan (200) shares of your capital stock with a par value of P100 each. Enclosed you will find (Babayaran kong lahat pagkatapos na ako ay makapagpahuli ng isda) pesos as my initial payment and the balance payable in accordance with law and the rules and regulations of the Quezon College. I hereby agree to shoulder the expenses connected with said shares of stock. I further submit myself to all lawful demands, decisions or directives of the Board of Trustees of the Quezon College and all its duly constituted officers or authorities (ang nasa itaas ay binasa at ipinaliwanag sa akin sa wikang tagalog na aking nalalaman).

"Very respectfully,

"(Sgd.) DAMASA CRISOSTOMO

Signature of subscriber

"Nilagdaan sa aming harapan:

"JOSE CRISOSTOMO

"EDUARDO CRISOSTOMO"

Damasa Crisostomo died on October 26, 1948. As no payment appears to have been made on the subscription mentioned in the foregoing letter, the Quezon College, Inc. presented a claim before the Court of First Instance of Bulacan in her testate proceeding, for the collection of the sum of P20,000, representing the value of the subscription to the capital stock of the Quezon College, Inc. This claim was opposed by the administrator of the estate, and the Court of First Instance of Bulacan, after hearing, issued an order dismissing the claim of the Quezon College, Inc., on the ground that the subscription in question was neither registered in nor authorized by the Securities and Exchange Commission. From this order the Quezon College, Inc. has appealed.

It is not necessary for us to discuss at length appellant's various assignments of error relating to the propriety of the ground relied upon by the trial court, since, as pointed out in the brief for the administrator and appellee, there

are other decisive considerations which, though not touched by the lower court, amply sustained the appealed order.

It appears that the application sent by Damasa Crisostomo to the Quezon College, Inc. was written on a general form indicating that an applicant will enclose an amount as initial payment and will pay the balance in accordance with law and the rules or regulations of the College. On the other hand, in the letter actually sent by Damasa Crisostomo, the latter (who requested that her subscription for 200 shares be entered) not only did not enclose any initial payment but stated that "babayaran kong lahat pagkatapos na ako ay makapagpahuli ng isda." There is nothing in the record to show that the Quezon College, Inc. accepted the term of payment suggested by Damasa Crisostomo, or that if there was an acceptance the same came to her knowledge during her lifetime. As the application of Damasa Crisostomo is obviously at variance with the terms evidenced in the form letter issued by the Quezon College, Inc., there was absolute necessity on the part of the College to express its agreement to Damasa's offer in order to bind the latter. Conversely, said acceptance was essential, because it would be unfair to immediately obligate the Quezon College, Inc. under Damasa's promise to pay the price of the subscription after she had caused fish to be caught. In other words, the relation between Damasa Crisostomo and the Quezon College, Inc. had only thus reached the preliminary stage whereby the latter offered its stock for subscription on the terms stated in the form letter, and Damasa applied for subscription fixing her own plan of payment,-a relation, in the absence as in the present case of acceptance by the Quezon College, Inc. of the counter offer of Damasa Crisostomo, that had not ripened into an enforceable contract.

Indeed, the need for express acceptance on the part of the Quezon College, Inc. becomes the more imperative, in view of the proposal of Damasa Crisostomo to pay the value of the subscription after she had harvested fish, a condition obviously dependent upon her sole will and, therefore, facultative in nature, rendering the obligation void, under article 1115 of the old Civil Code which provides as follows: "If the fulfillment of the condition should depend upon the exclusive will of the debtor, the conditional obligation shall be void. If it should depend upon chance, or upon the will of a third person, the obligation shall produce all its effects in accordance with the provisions of this code." It cannot be argued that the condition solely is void, because it would have served to create the obligation to pay, unlike a case, exemplified by *Osmeña vs. Rama* (14 Phil., 99), wherein only the potestative condition was held void because it referred merely to the fulfillment of an already existing indebtedness.

In the case of *Taylor vs. Uy Tieng Piao et al.* (43 Phil., 873, 879), this Court already held that "a condition, facultative as to the debtor, is obnoxious to the first sentence contained in article 1115 and renders the whole obligation void."

Wherefore, the appealed order is affirmed, and it is so ordered with costs against the appellant.

Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

Bengzon, Padilla and Reyes, JJ., concur in the result.

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