

SIMPLICIO LIZARES ET AL., PETITIONERS-APPELLEES, VS. FINANCING CORPORATION OF THE PHILIPPINES, ET AL., RESPONDENTS-APPELLANTS.

G.R. No. L-3401. June 26, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

This is an appeal from a decision of the Court of First Instance of Manila granting the appellees' petition for mandamus to compel the appellants to allow the appellees as stockholders of the Financing Corporation of the Philippines to examine its books and records.

It is not disputed that the petitioners are registered owners of 497,000 shares of stock of the respondent Financing Corporation of the Philippines with a par value of one peso a share.

On March 17, 1949, the petitioners Simplicio Lizares and Antonio Lizares addressed to the respondent J. Amado Araneta, in his capacity as general manager of the corporation, a letter requesting certain information pertaining to the corporation. That letter was ignored by the addressee. On March 29, 1949, the said petitioners, together with fourteen other stockholders, sent another letter to the respondent Araneta informing the latter that they had appointed Mr. Claro M. Recto their representative to inspect the books and records of the corporation with the assistance of an auditor. Again said letter was ignored. On May 4, 1949, counsel for the petitioners sent a final letter of demand reiterating the petitioners' request "that they be allowed, thru their duly authorized representatives, to inspect the books of the Financing Corporation of the Philippines," and adverting that "if after five days from your receipt of this letter, I do not hear from you about this matter, ray clients and I will consider this as an indication that the present officers of the Financing Corporation of the Philippines definitely refuse to allow the inspection of the books of said corporation as requested in the letters aforementioned, and that the corporate officers of the Financing Corporation of the Philippines prefer to have said stockholders take the proper steps to enforce their rights of inspection of the books of the corporation under our Corporation Law." Again that letter was ignored and remained unanswered. Hence the commencement of the present action for mandamus.

Against the petition alleging substantially the foregoing facts, the respondents filed a motion to dismiss on the ground that "said petition does not allege facts sufficient to constitute a cause of action." The motion was denied, and the respondents answered (1) denying that there had been any refusal of the respondents to allow the herein petitioners to inspect and examine the books and records of the respondent corporation; and (2) alleging as a special defense "that the alleged formal written requests and demands made by the petitioners were entirely uncalled for, in view of the fact that the petitioners, some of whom are present or former directors of respondent corporation, have never been denied free access to the office and records of respondent corporation; that as a matter of fact petitioners have already received from the president of the company all the data and information requested in their alleged letter of March 17, 1949."

Both parties thereafter asked the court to render judgment on the pleadings—the petitioners asking that the petition

be granted, and the respondents, that it be denied. The court granted the petition.

We find no merit and no necessity for this appeal. The pertinent and decisive facts are not disputed, and the law applicable thereto is clear. Sections 51 and 52 of the Corporation Law provide that:

"The record of all business transactions of the corporation and minutes of any meeting shall be open to the inspection of any director, member, or stockholder of the corporation at reasonable hours", and

"The stock and transfer books shall be open to the inspection of any director, stockholder, or member of the corporation at reasonable hours."

If the right of inspection is denied, the remedy available to the stockholder is mandamus (*Philpotts vs. Phil. Mfg. Co. et al.*, 40 Phil. 471-472); and the right of inspection may be exercised either by the stockholder in person or by any proper representative either with or without the attendance of the stockholder (*Philpotts vs. Phil. Mfg. Co. et al.*, supra, p. 474).

If, as the appellants would now give the Court to understand, they have been and are ready and willing to allow the petitioners to examine the books and records of the corporation, why did they not answer any of the formal requests of the petitioners for permission to examine said books and records? Decent respect and due courtesy to stockholders owning shares of stock of the corporation aggregating nearly half a million pesos should have impelled the appellants to answer appellees' first request instead of putting the appellees to the trouble of writing the subsequent letters, which the appellants likewise ignored for no valid reason that appears in the record, thereby compelling the appellees to undergo the trouble and expense of instituting this action. The present appeal from a judgment which merely requires the appellants to do what they recognize they are in duty bound to do under the law, cannot deserve serious consideration from this Court.

Even assuming the truth of appellants' allegation that the petitioners had received from the president of the company all the data and information requested in their letter of March 17, 1949, that fact would not be a sufficient ground to deny the petition for inspection of the books and records. It is the general rule that the right of inspection is not qualified by the necessity for it; where the right of inspection exists, refusal of it cannot be justified by proffering to the stockholder a substitute, or on the ground that he has had the information at the hands of the company, or that it may be obtained from other sources, or that it is not necessary, or that he has recently been allowed inspection. (5 *Fletcher Cyc. Corp.*, 658-659.)

Another objection of the appellants is that the letters of request and demand for inspection of the books and records of the corporation were addressed not to the secretary, the custodian of said books and records, but to the general manager of the corporation. Such technical objection is not a sufficient ground upon which to deny the petition. It is the general rule that a demand made upon the officers of the company personally is equally as effective as one addressed to the corporation or to the directors. (5 *Fletcher Cyc. Corp.*, 650-651.) A stockholder's right to examine the books is not precluded because his demand was not made on the board of directors which alone, under its by-laws, can grant the permission, where it was made in writing and in person upon the president of the company and upon its resident agent at its home office, since it is the duty of the president or the resident agent to submit the demand to the directors. (*State ex rel. Cochran vs. Penn-Beaver Oil Co.*, 143 Atl. 257.) A demand on the board of directors is not necessary before mandamus proceedings to compel the corporation and its president to permit an examination, where a demand in writing was made on the president and by him refused. (*Feick vs. Hill Bread Co.*, 103 Atl. 313.)

The judgment is affirmed, with costs against the appellants in both instances.

Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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