

## SUSANA GALA DE ENRIQUEZ, ET AL., PLAINTIFFS-APPELLEES, VS. EL HOGAR FILIPINO, DEFENDANT-APPELLANT.

*G.R. No. L-23215. June 09, 1969*

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

Appeal from a money judgment of the Court of First Instance of Manila to the Court of Appeals but certified by the latter to us as a case involving purely questions of law.

The appealed judgment was rendered on the basis of a long "Stipulation of Facts", which is characterized more by allegations and denials than by statements of agreed facts. Those that may be considered as stipulated or non-controversial are the following:

The defendant-appellant, El Hogar Filipino, is a mutual building and loan association, while the plaintiffs-appellees or their predecessors-in-interest are the owners, since before the last war, of 158 fully paid shares of stock ("acciones liberadas"), with a par value of P200.00 per share, issued to them by the appellant association. One of the certificates of stock, evidencing these shares, is transcribed in words and figures, as follows:

"Series --- 24.a " (7%) Titulo No. 3206

EL HOGAR FILIPINO

Sociedad Mutua de Construccion y Prestamos

Manila

Acciones Liberadas

"Titulo a favor de D. EMILIANO A. GALA que acredita la propiedad de CINCUENTA Y NUEVE (59) Acciones Liberadas de Un Valor de DOSCIENTOS PESOS moneda filipina (P200.00) cada una, o sea un valor total de ONCE MIL OCHOCIENTOS pesos (P11,800.00).

"Estes acciones devengaran desde la fecha el dividendo de siete por ciento (7) annual señalado por el Directorio de este Sociedad en acuerdo adop-tado el dia 27 de Agosto de 1929 y se emiten en las condiciones expresadas al dorso.

"Manila 7 de Noviembre de 1930

(Sgd.) Illegible

Presidente

(Sgd.) Illegible

Gerente

(Sgd.) Illegible

Secretario"

The annual fixed dividend of 7% was paid by the appellant to the appellees until the outbreak of the war. When the war broke out, the association did not turn over its cash and securities to the U. S. Embassy. On 2 January 1942, it suspended operations by order of the Japanese Military Administration and did not resume operations until it was so authorized by the then Ministry of Finance on 31 March 1944. On 4 April 1944, the Board of Directors adopted a resolution, which was never registered with the Securities and Exchange Commission, reducing the dividends for "acciones liberadas" from 7% to 4%. After liberation, it again suspended operations and re-opened only on 1 July 1952 after it was granted authority to re-open by the Superintendent of Banks of the Central Bank under certain conditions, one of them being to re-open on the basis of a recognized paid-in capital of P1,778,219.20 (inclusive of matured, forfeited and cancelled shares) based on its balance sheet as of 31 December 1951 and subject to the condition that no payment shall be made on the capital received during the enemy occupation without the written approval of said office. Pursuant to these conditions, the association deducted from the face value of ap-pellees' shares the amount of P8,781.69, which corresponds to 27.79% pro-rata impairment on the capital for all kinds of shares of the association.

On 6 July 1954, the appellees applied for the retirement of their 158 shares, demanding their surrender value in the amount of P31,600.00 and accrued 7% dividends. Appellant paid the shares but deducted P8,781.69 or the equivalent of the 27.79% impairment.

The plaintiffs-appellees filed suit for their unpaid claims in the Court of First Instance of Manila, where it was docketed as Civil Case No. 27259. After the filing of the complaint, the appellant paid the appellees dividends on their shares for the period starting 1 January 1952 to 10 July 1955, not at 7% but at 4%, amounting to P3,233.87. After the parties submitted their so-called "Stipulation of Facts", the court rendered judgment, ordering the defendant El Hogar Filipino to pay P8,781.69, with legal interest from the filing of the complaint; to pay the amount equivalent to 4% of the face value of the shares, as dividend, minus the amount of dividend already paid to the appellees, from 1 July 1952, with interest until fully paid, attorney's fees and costs.

The plaintiffs did not appeal, but the defendant, El Hogar Filipino appealed, as stated in the beginning of this decision, posing the issue of the validity of the impairment of 27.79% of the shares of the appellees.

For authority for the impairment of the appellees' preferred shares by 27.79%, appellant points to the conditions imposed by the Superintendent of Banks for the resumption of its business, per his letter dated 18 May 1951, the pertinent portion of which reads, as follows:

"In order to enable us to prepare the ne-cessary recommendation to the Monetary Board to permit 'El Hogar Filipino, Sociedad Mutua de Construcccion y Prestamos' to resume its operation, it is necessary that you first fulfill the following:

"1. Submit a duly approved resolution of your Board of Directors authorizing the re-opening of the Association on the basis of the recognized paid-in capital, inclusive of matured, forfeited and cancelled shares in the amount of P1,698,399.33.

"2. Adjust your books of accounts and records to conform with the above basis of reopening. The amount of P764,164.48, which represents the sum of the impairment of capital consisting the net loss per statement and other liability reserve, should be charged pro-rata against the book value of all shares aggregating P2,462,563.81, in accordance with the provisions of Section 10 (b) of Republic Act No. 64."

Allegedly, the above-conditions are in pursuance of post-war legislation, namely, Commonwealth Act No. 726

(approved on 15 January 1946) and Re-public Act No. 64 (approved on 17 October 1946); more particularly, Section 10 (b) of the latter Act, which provides:

"SEC. 10 (b). The [Financial Rehabilitation] Board shall not invest in preferred shares of any mutual building and loan association until after such association, with the approval of the Bank Commissioner, shall have ascertained its true financial condition and apportioned the loss incurred during the period of enemy occupation, if any, by prorating such loss among the shareholders of all classes according to the book value of all out-standing shares: Provided, That recoveries made of any loss incurred during the period of enemy occupation shall be distributed to all the shareholders against whom such loss has previously been charged."

The foregoing provision is not a grant of authority to devalue preferred shares, but a prohibition against the Financial Rehabilitation Board from investing in preferred shares of any mutual building and loan association that fails to apportion, among all its shareholders, its losses during the enemy occupation. When this provision is read together with Commonwealth Act 726, the import becomes that a building and loan association may apportion its losses in order to qualify for the purchase of its preferred shares by the Board from the "Financial Institution Rehabilitation Fund" for banks, created by Commonwealth Act 726, the benefits of which were extended to building and loan associations by Republic Act 64, under certain conditions, which in no way may be interpreted as an order to, or an obligation of, building and loan associations to unilaterally devalue or impair preferred shares.

Appellant also cites Section 9 of Commonwealth Act 726 where the Bank Commissioner may order an insolvent bank to resume its operations, instead of liquidating it, through the segregation of the excess of its non-preferred liabilities over its assets less the amount of preferred liabilities, and the conversion of said excess into pro-rata credits of deferred payment burdening future net profits. But the whole of Section 9 of said Commonwealth Act does not apply to building and loan associations, as expressly provided for in the first proviso of Section 1 of Republic Act 64, amending Section 10 (a) of Commonwealth Act 726.

"- - - Provided, That the provisions of section eight, relative to the ratio to be maintained between the remaining unimpaired capital and surplus and the outstanding deposit liabilities, and the whole of section nine and ten of this Act shall not be applicable to mutual building and loan association; And provided, further, That mutual building and loan associations are authorized to issue preferred shares of stock as mentioned herein solely for the purpose of this Act." (REPUBLIC ACT No. 64)"

What this Court stated in *El Hogar Filipino vs. Angeles*, L-11613, 30 September 1958 (unpublished), well applies to the present case:

"Acceptance, by the officers and directors of a building and loan association, of conditions imposed by the Central Bank upon its resuming operation on July 1, 1952, including, among other things, a material reduction in paid-in capital, could not affect the holder of shares which had matured back in 1940, as she was a creditor, rather than a stockholder, and the officers and directors had no authority to represent her in accepting such conditions." (1 PAL 255, 163 Cumulative Supplement) - - -;

while the case of *El Ahorro Insular vs. Aquino*, 105 Phil. 307, relied upon by the herein appellant to support its devaluation of the preferred shares such that holders thereof may share in its war-time losses, does not apply, the facts being different, for the shares of stock involved therein were "common" shares that participate in the profits, a right not available to the herein appellees who are holders of preferred stocks, not entitled to profits, as provided for in the By-Laws of *El Hogar Filipino*, as follows:

"ART. 20. - Las acciones Liberadas se emiten mediante el pago de su total importe de P200 en el momento de la suscripcion y devengaran el dividendo fijo no acumulativo que señale el Directorio y que estara expresado en el Titulo correspondiente y no tendran mas participacion en las utilidades o acrecentamientos de la

Asociacion."

The true nature of preferred paid up shares, and their relation to profits and losses of the issuing building and loan association, have been amply discussed in *Yatco vs. El Hogar Filipino*, 67 Phil. 621, where this Court, citing numerous authorities, ruled as follows:

"As a matter of fact, the authorities hold that the issuance of paid up shares is merely a borrowing of money on the part of building and loan associations" (67 Phil. 626-627).

"The issuance of paid up shares enables building and loan associations to raise funds available for loan to its members and the restriction of the participation of such shares in the profits of the association to a fixed dividend assures the association a reasonable margin of profit in the transaction which redounds to the benefit of ordinary stockholders" (67 Phil. 627-628).

"The defense of defendant-appellant that it has suffered losses is immaterial to the issue as to whether defendant-appellant should pay plaintiff-appellee the withdrawal value of her paid up shares upon the expiration of the period of notice provided in its by-laws as a condition precedent to the withdrawal of paid up stock. The fact that defendant-appellant may have really suffered losses may affect its ability to pay, but does not in any way diminish its liability or detract from the right of plaintiff-appellee to demand payment of the value of her surrendered paid up stock. This, to our mind, is crystal clear." (*Yatco vs. El Hogar Filipino*, 67 Phil. 630).

Whether or not the appellee holders of preferred paid up shares asked for reimbursement before or after the Central Bank's permit to appellant to resume operations is immaterial: their right to collect the principal of their credits does not depend upon the operations of the debtor association. Operating or not operating its business, a debtor must pay its obligations in full, unless it is subjected to insolvency proceedings.

The deduction, therefore, by the appellant of 27.79% of the value of appellees' preferred shares was without authority in law, and the court a quo did not err in ordering its payment.

In this appeal, the appellees argue and pray for the full payment of 7% dividends on their shares, instead of only the 4% that the trial court, in its decision, ordered to be paid. Since the appellees did not appeal, they are not allowed to seek a modification of the appealed judgment on this point (*Saenz v. Mitchel*, 60 Phil. 69, 80; *Mendoza v. Mendiola*, 53 Phil. 267; *Pineda & Ampil Mfg. Co., et al. v. Bartolome*, 95 Phil. 930).

FOR THE FOREGOING REASONS, the appealed judgment is hereby affirmed, with costs against the appellant, *El Hogar Filipino*.

Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Capistrano, JJ., concur.

Concepcion, C.J., and Castro, J., on official leave.

Teehankee and Barredo, JJ., did not take part.

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