

**SALVADOR BENEDICTO AND FRANCISCO RODRIGUEZ,
PLAINTIFFS-APPELLANTS, VS. PHILIPPINE-AMERICAN FINANCE AND
DEVELOPMENT CO., INC., ET AL., DEFENDANTS-APPELLEES.**

G.R. No. L-8695. May 31, 1957

Ponente: REYES, A., J.

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REYES, A., J.:

This is an appeal from a judgment of the Court of First Instance of Manila, certified to this Court by the Court of Appeals because it involves more than P50,000.00,

It appears that the defendant Philippine-American Finance and Development Co., Inc. is a duly organized Philippines corporation with an authorized capital stock of P30,000.00 divided into shares of P.01 each, its articles of incorporation having been registered with the Securities and Exchange Commission on April 24, 1947. Sometime that month, the plaintiffs Salvador Benedicto and Francisco G. Rodriguez in, a conversation with the president of the corporation Joseph Hirshhorn, who was then in the Philippines agreed to buy shares of stock of the corporation, and following Hirshhorn's departure for New York on the 27th of that same month, the sale was consummated through correspondence as follows: For the details of the sale Hirshhorn referred plaintiffs to Robert Janda, of the law firm Ross, Selph, Carrascoso & Janda, then legal counsel for the corporation, and instructed Janda to "obtain firm commitment" from plaintiffs. In answer, the law firm cabled Hirshhorn it could not obtain firm commitment from plainliffs except on the basis that they would buy after permit (from the Securities and Exchange Commission) had been secured, and that it could not approach plaintiffs if the sale was to be made in New York because solicitation as well as sale was prohibited in the absence of such permit. Thereafter, Hirshhorn by letters and cablegram urged plaintiff to clear up their commitment on the purchase of shares, saying that there were people in New York trying to buy the shares at P4.00 or more each. In compliance with Hirshhorn's request, plaintiffs remitted P25,000.00 each to Hirshhorn in New York on October 23, 1947 in payment for the shares they had agreed to buy. Hirshhorn, upon receipt of this remittance, cabled plaintiffs asking from each of them an additional payment of P25,000.00, claiming that their original understanding for a subscription to 12,500 shares at P4.00 a share for each of them was changed to one for a subscription to 25,000 shares at P2.00 a share. But on plaintiffs' repeated explanation that their intention was for each of them to buy shares worth P25,000.00 only (and not \$25,000.00 or P50,000.00) Hirshhorn finally sent them a radiogram dated November 19, 1947, saying; "Realize blunder occurred confusion dollars pesos stop personally regret misunderstanding."

Thereafter, plaintiffs were issued each a temporary certificate of stock for 12,500 shares with a par value of P.01 each, the certificates being later substituted by permanent ones signed by Palileo, secretary of the corporation, and sent to plaintiffs on December 17, 1947 through the corporation's New York office. Some time after that, the company's office in Manila was closed.

On November 2, 1949, plaintiffs filed the present action in the Court of First Instance of Manila to annul the sale

and to recover the purchase price they had paid, plus damages. Made defendants in the action were the corporation itself, Joseph Hirshhorn, personally and in his capacity as president of the corporation, Ewald Selph, James Ross and Robert Janda, as incorporating directors, and Mariano Palileo, as incorporating director and secretary. The action was based on the ground, that the sale was null and void because the shares were not registered with, the Securities and Exchange Commission and their sale was not permitted, and that the directors of the corporation were liable for having participated and/or aided in the sale and issuance of the said shares* The defendants denied liability and set up the defense, among others, that plaintiffs' action had already prescribed.

Before hearing, the action was, at plaintiffs' instance, dismissed as to the defendants Hirshhorn, Selph and Ross, so that the only defendants left were Janda and Palileo and the corporation. After hearing, the trial court rendered judgment absolving the remaining defendants from the complaint on the grounds (1) that the defendants Janda and Palileo did not Intervene or participate in the sale; (2) that the sale was not authorised by the board of directors of the corporation; and (3) that plaintiffs' action had already prescribed.

Appealing from this judgment, plaintiffs contend that the lower court erred;

(1) IN HOLDING THAT THE ACTS COMMITTED BY DEFENDANTS MARIANO PALILEO AND ROBERT JANDA IN CONNECTION WITH THE SALE OF THE SHARES OF STOCK DO NOT CONSTITUTE SUCH PARTICIPATION OR AID IN THE SALE AND ISSUANCE OF SHARES AS TO RENDER THEM LIABLE UNDER THE SECURITIES ACT;

(2) IN HOLDING THAT PLAINTIFFS-APPELLANTS' ACTION HAD ALREADY PRESCRIBED;

(3) IN ABSOLVING THE DEFENDANTS PHILIPPINE-AMERICAN FINANCE AND DEVELOPMENT CO., INC., ROBERT JANDA AND MARIANO PALILEO FROM THE COMPLAINT; and

(4) IN NOT FINDING THAT PLAINTIFFS-APPELLANTS ARE ENTITLED TO AVOID THE SALE AND TO RECOVER THE AMOUNTS THEY HAVE PAID FOR THE SHARES IN QUESTION OR, THE SUM OF P50,000.00 AND ATTORNEY'S FEES, FROM EITHER OR ALL OF THE DEFENDANTS, THE LATTER BEING JOINTLY AND SEVERALLY LIABLE THEREFOR.

Without going into the question of whether, upon the fact proved, defendants are liable or not, the case may be decided on the question of prescription. The pertinent provision of section 30 of the Securities Act reads:

"SEC. 30. Remedies (a) Every sale made in violation of any of the provisions of this Act or wherein the purchaser shall have relied upon any statement which was at the time and in the light of the circumstances under which it was made 'false and misleading with respect to any material fact contained in any application report, or document filed pursuant to this Act or any rule or regulation thereunder, shall be voidable at the election of the purchaser; and the person making such sale and every director, officer or agent of or for such seller, if such director, officer or agent shall have personally participated or aided in any way in making such sale, shall be jointly and severally liable to such purchaser in an action in any court of competent jurisdiction upon tender of the securities sold or of the contract made, for the full amount paid by such purchaser, with interest, together with all taxable court costs and reasonable attorney's fees: Provided, That no action shall be brought for the recovery of the purchase price after two years from the date of such sale: And Provided,

further, That no purchaser otherwise entitled shall claim or have the benefit of this section who shall have refused or failed within thirty days from the date thereof to accept an offer in writing of the seller to take back the security in question and to refund the full amount paid by such purchaser, together with interest on such amount for the period from the date of payment by such purchaser down to the date of repayment, such interest to be computed: x x x" (underlining supplied)

It should be noted that while the law gives the purchaser the right to void a sale made in violation of its provisions, it at the same time limits the time for bringing the action for that purpose to "two years from the date of such sale."

In the present case, the sale, which was negotiated in April, 1947, was consummated upon payment of the purchase price, and this took place when the money was on October 23, 1947 remitted by plaintiffs to Hirshhorn in New York, and receipted by the latter on the following day. As the present action for annulment was not brought until November 2, 1949 or two years and 10 days after the consummation of the sale, it is obvious that the lower court did not err in upholding the defense of prescription.

Plaintiffs, however, contend that "the offer to sell and the acceptance which took place sometime in May, 1947" did not become a binding contract "until the acceptance by Hirshhorn of plaintiffs' counter-offer." But we see no merit in this contention. The record does not show that plaintiffs have made any "counter-offer." It is true that when Hirshhorn, after receiving their remittance of P50,000.00 in payment, for 25,000 shares, demanded a further payment of P50,000.00, saying that plaintiffs' combined subscription was for 50,000 shares at P2.00 each, and that when plaintiffs cabled back saying that their commitment, as modified, was only for 25,000 shares for both of them at P2.00 per share, Hirshhorn agreed to their explanation, acknowledged his mistake and expressed his regrets. But we see nothing in plaintiff's explanation, as appears in the cablegram referred to, that could be taken as a counter-offer. On the contrary, the cablegram shows that they were adhering to their commitment, for they there said; "We are not changing our commitment but you forget we were talking in pesos not in dollars," If plaintiffs were thus sticking to their contract, they cannot now say that they were making a counter-offer.

In view of the foregoing, the judgment below in so far as it dismiss the complaint on the ground of prescription is affirmed but without costs.

Paras, C.J., and Montemayor, J., concur.

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