

**C. ARNOLD HALL AND BRADLEY P. HALL, PETITIONER, VS.
EDMUNDO S. PICCIO, JUDGE OF THE COURT OF FIRST INSTANCE OF
LEYTE, FRED BROWN, EMMA BROWN, HIPOLITA D. CHAPMAN, AND
CEFERINO S...**

G.R. No. L-2598. June 29, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

This is a petition to set aside all the proceedings had in Civil Case No. 381 of the Court of First Instance of Leyte and to enjoin the respondent judge from further acting upon the same.

Facts: 1. On May 26, 1947, the petitioners C. Arnold Hall and Bradley P. Hall, and the respondents Fred Brown, Emma Brown, Hipolita D. Chapman and Ceferino S. Abella, signed and acknowledged in Leyte, the articles of incorporation of the Far Eastern Lumber and Commercial Co., Inc., organized to engage in a general lumber business, to carry on as general contractors, operators and managers, etc. Attached to the articles was an affidavit of the treasurer stating that 23,428 shares of stock had been subscribed and fully paid with certain properties transferred to the corporation described in a list appended thereto.

(2) Immediately after the execution of said articles of incorporation, the corporation proceeded to do business with the adoption of by-laws and the election of its officers.

(3) On December 2, 1947, the said articles were filed in the office of the Securities and Exchange Commissioner, for the issuance of the corresponding certificate of incorporation.

(4) On March 22, 1948, pending action on the articles of incorporation by the aforesaid governmental office, the respondents Fred Brown, Emma Brown, Hipolita D. Chapman and Ceferino S. Abella filed before the Court of First Instance of Leyte the civil case numbered 381, entitled "Fred Brown et al., vs. Arnold C. Hall et al.", alleging among other things that the Far Eastern Lumber and Commercial Co. was an unregistered partnership; that they wished to have it dissolved because of bitter dissension among the members, mismanagement and fraud by the managers and heavy financial losses.

(5) The defendants in the suit, namely, C. Arnold Hall and Bradley P. Hall, filed a motion to dismiss, contesting the court's jurisdiction and the sufficiency of the cause of action.

(6) After hearing the parties, the Hon. Edmundo S. Piccio ordered the dissolution of the company; and at the request of plaintiffs, appointed the respondent Pedro A. Capuciong as receiver of the properties thereof, upon the filing of a twenty-thousand-peso bond.

(7) The defendants therein (petitioners herein) offered to file a counter-bond for the discharge of the receiver. But the respondent judge refused to accept the offer and to discharge the receiver. Whereupon the present special civil action was instituted in this court. It is based upon two main propositions, to wit:

(a) The court had no jurisdiction in civil case No. 381 to decree the dissolution of the company, because it being a de facto corporation, dissolution thereof may only be ordered in a quo warranto proceeding instituted in accordance with Section 19 of the Corporation Law.

(b) Inasmuch as respondents Fred Brown and Emma Brown had signed the articles of incorporation, they are estopped from claiming that it is not a corporation but only a partnership.

Discussion: The second proposition may at once be dismissed. All the parties are informed that the Securities and Exchange Commission has not, so far, issued the corresponding certificate of incorporation. All of them know, or ought to know, that the personality of a corporation begins to exist only from the moment such certificate is issued — not before (Sec. 11, Corporation Law). The complaining associates have not represented to the others that they were incorporated any more than the latter had made similar representations to them. And as nobody was led to believe anything to his prejudice and damage, the principle of estoppel does not apply. Obviously this is not an instance requiring the enforcement of contracts with the corporation through the rule of estoppel.

The first proposition above stated is premised on the theory that, inasmuch as the Far Eastern Lumber and Commercial Co. is a de facto corporation, section 19 of the Corporation Law applies, and therefore the court had no jurisdiction to take cognizance of said civil case number 381. Section 19 reads in part as follows:

"* * * The due incorporation of any corporation claiming in good faith to be a corporation under this Act and its right to exercise corporate powers shall not be inquired into collaterally in any private suit to which the corporation may be a party, but such inquiry may be had at the suit of the Insular Government on information of the Attorney-General.

There are at least two reasons why this section does not govern the situation. Not having obtained the certificate of incorporation, the Far Eastern Lumber and Commercial Co.—even its stockholders—may not probably claim "in good faith" to be a corporation.

"Under our statute it is to be noted (Corporation Law, Sec. 11) that it is the issuance of a certificate of incorporation by the Director of the Bureau of Commerce and Industry which calls a corporation into being. The immunity to collateral attack is granted to corporations 'claiming in good faith to be a corporation under this act.' Such a claim is compatible with the existence of errors and irregularities; but not with a total or substantial disregard of the law. Unless there has been an evident attempt to comply with the law the claim to be a corporation 'under this Act' could not be made 'in good faith.' " (Fisher on The Philippine Law of Stock Corporations, p. 75. See also *Humphreys vs. Drew*, 59 Fla. 295, 52 So. 362.)

Second, this is not a suit in which the corporation is a party. This is a litigation between stockholders of the alleged corporation, for the purpose of obtaining its dissolution. Even the existence of a de jure corporation may be terminated in a private suit for its dissolution between stockholders, without the intervention of the state.

There might be room for argument on the right of minority stockholders to sue for dissolution;^[1] but that question does not affect the court's jurisdiction, and is a matter for decision by the judge, subject to review on appeal. Which brings us to one principal reason why this petition may not prosper, namely: the petitioners have their remedy by appealing the order of dissolution at the proper time.

There is a secondary issue in connection with the appointment of a receiver. But it must be admitted that receivership is proper in proceedings for dissolution of a company or corporation, and it was no error to reject the counter-bond, the court having decreed the dissolution. As to the amount of the bond to be demanded of the receiver, much depends upon the discretion of the trial court, which in this instance we do not believe has been clearly abused.

Judgment: The petition will, therefore, be dismissed, with costs. The preliminary injunction heretofore issued will be dissolved.

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

[1] Cf. Thompson on Corporations, 3d. ed., secs. 6455-6457. But the suit might be viewed as one for rescission of contract, the agreement between incorporators being contractual in nature. Fisher op. cit. p. 14.

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