

**ESTEFANIA R. VDA. DE PIROVANO, PLAINTIFF AND APPELLANT, VS.
DE LA RAMA STEAMSHIP CO., INC., DEFENDANT AND APPELLEE.**

G.R. No. L-6817. July 31, 1958

Ponente: PADILLA, J.

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PADILLA, J.:

Plaintiff seeks to recover from the defendant the sum of P221,975.45, the balance of the amount of dividends at P100 per share, declared by Resolution No. 50-127 of 29 December 1950, to which she is entitled as the registered owner of 3,424 shares of stock in the defendant corporation, after deducting the sum of P120,424.55 she had withdrawn or received from the defendant for advances made to her after the death of the late Esteban de la Rama, 20 per cent of the sum sought to be recovered for attorney's fees and expenses of litigation by way of damages, and costs.

Answering the complaint, the defendant avers that although the plaintiff is entitled to the dividends claimed in the complaint, yet she is indebted to the defendant as of 29 December 1950 in the sum of P444,202.52, and that by reason of the unnecessary commencement of the suit, the defendant suffered damages in the sum of P100,000. Upon the foregoing allegations the defendant asks for the dismissal of the complaint and prays that judgment be rendered condemning the plaintiff to pay the amount of damages it has suffered and costs.

After hearing, the Court dismissed both the complaint and the counterclaim without pronouncement as to costs. The plaintiff has appealed.

Appellant's theory is that the cash advances to her in the United States during the Pacific War for her personal expenses and for the support and education of her children were assumed by Esteban de la Rama, as set forth in his letter dated 5 May 1947 (Exhibit B) to the appellee and the Hijos de I. de la Rama & Co., Inc., consented to and approved by both corporations. She claims that the advances made to her by the appellee were debited against the account of Hijos de I. de la Rama & Co., Inc., another corporation practically owned by Esteban de la Rama; that the only sum the appellee corporation may deduct from the amount of dividends to which she is entitled is P120,424.55 which she received after the death of her father Esteban de la Rama and was not assumed by him; and that as a matter of fact in special proceedings No. 401 of the Court of First Instance of Iloilo for the administration and settlement of the estate of the late Esteban de la Rama, the Hijos de I. de la Rama & Co., Inc., filed a claim charging the estate with the aforesaid advances for expenses of the appellant and of her children which had been assumed by the deceased in his lifetime, a claim which, although reduced to P26,000 as per Ballentyne schedule of monetary value, was approved by the Court of First Instance of Iloilo on 27 September 1950, and the executor of the estate of the late Esteban de la Rama was directed to pay the claim thus allowed (Exhibit O).

The appellee resists appellant's claim upon the ground that the assumption by Esteban de la Rama of the total sum of withdrawals by the appellant for her expenses and of her children was never consented to by the appellee and hence not binding upon it; and that the accounting method by which the withdrawals were charged against the

Hijos de I. de la Rama & Co., Inc. was to circumvent the prohibition imposed upon the appellee to declare dividends, agreed upon in the deed of trust executed by the appellee and the National Development Company, a prohibition which lasted from 26 February 1940 to 23 September 1949 (Exhibit 7).

There is no dispute that the appellant is the registered owner of 3,424 shares of stock in the appellee corporation; that on 29 December 1950 the appellee by Resolution No. 50-127 declared a dividend of F100 for each share of stock; that the appellee further resolved that the personal accounts of the stockholders of the De la Rama Steamship Co., Inc., which include that of the appellant in the sum of P444,202.52 set up in the books of De la Rama Steamship Co., Inc. against the Hijos de I. de la Rama & Co., Inc., be credited to the account of the last named corporation and debited to accounts receivable from the stockholders; and that from the amount of dividends, the personal account of each and every stockholder be deducted (Exhibit A-I).

The determination of the controversy hinges on whether the assumption made by the late Esteban de la Rama in his lifetime of all the advances made by the appellee to the appellant was binding upon it. There is no doubt that because of the prohibition agreed upon in the deed of trust to the effect that no dividends could be declared by the appellee during the period of time already stated, advances to the stockholders would constitute a violation of section 12 of the deed of trust. For that reason it was made to appear that such advances were made to the Hijos de I. de la Rama & Co., Inc. and debited the same against the latter in the books of the appellee, and in the books of the Hijos de I. de la Rama & Co., Inc. the said advances were debited against the individual stockholders, the stockholders of both corporations being the same. The pivotal point is whether the assumption by Esteban de la Rama of the advances made to the appellant by the appellee, as stated in his letter of 5 May 1947, was consented to by the appellee to constitute a novation. Express consent by the creditor is necessary to substitute another for the debtor.^[1] Such consent does not appear to have been given by the board of directors of the appellee. Corporate acts of a corporation must appear in its books or records. No such consent appears in the books or records of the appellee.

The appellant does not dispute the total sum of her withdrawals which is P444,202.52 as claimed by the appellee.

Aside from the letter of 5 May 1947 of Esteban de la Rama, the appellant relies upon the financial statements and books of the appellee where the withdrawals by the appellant were entered in the account of Hijos de I. de la Rama & Co., Inc. or transferred to the account of Esteban de la Rama. The entries on the withdrawals by the appellant entered in the account of Hijos de I. de la Rama & Co., Inc. or transferred to the account of Esteban de la Rama have already been explained satisfactorily. They were done so in order to circumvent the prohibition referred to above. As a matter of fact the withdrawals made by the appellant were made by her and not by the Hijos de I. de la Rama & Co., Inc. Nor is there any evidence that those advances were used by the Hijos de I. de la Rama & Co., Inc.

As to the inclusion of the withdrawals made by the appellant in the claim of the Hijos de I. de la Rama & Co., Inc. filed against the estate of the late Esteban de la Rama in special proceedings No. 401 of the probate court of Iloilo and allowed by the court although in a reduced amount, suffice it to say that such act of the Hijos de I. de la Rama & Co., Inc. cannot and does not bind the appellee. Its appearance in the probate court was by order of that court of 19 June 1950 (Exhibit M), and in its pleading the appellee disclaimed any interest in the claim filed by the Hijos de I. de la Rama & Co., Inc. against the estate of the late Esteban de la Rama (Exhibit N).

Resolution No. 50-127 of the board of directors of the appellee of 29 December 1950, whereby a cash dividend of P2,000,000 was declared in favor of stockholders of record as of 1 December 1950, or at the rate of F100 per share, subject to the conditions already stated, does not suffer from any legal infirmity. The segregation from the account of Hijos de I. de la Rama & Co., Inc. and the setting up in the books of the De la Rama Steamship Co.,

Inc. of withdrawals made by the stockholders of the appellee as accounts receivable due from said stockholders was even suggested by the President of Hijos de I. de la Rama & Co., Inc. in a letter dated 9 April 1945, addressed to the De la Rama Steamship Co., Inc. (Exhibit A-I)

There is no room for the application of the *pari delicto* principle to the instant case, because the appellee corporation and the Hijos de I. de la Rama & Co., Inc. have committed no crime or violation of law, but a violation of section 12 of the deed of trust by the appellee corporation which gave rise to a cause of action by the National Development Company, the injured party, against the appellee corporation. However, the National Development Company chose not to avail itself of its right.

The appellant must answer for the personal advances made to her by the appellee corporation and the latter may set off the total sum of such advances against the amount of dividends to which she is entitled.

For the foregoing considerations, the judgment appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Conception, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

Judgment affirmed.

[1] Article 1293, new Civil Code.

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