

RICARDO A. NAVA, PETITIONER-APPELLANT, VS. PEERS MARKETING COR-PORATION, RENATO R. CUSI AND AMPARO CUSI, RESPONDENTS-APPELLEES.

G.R. No. L-28120. November 25, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

This is a mandamus case. Teofilo Po as an incorporator subscribed to eighty shares of Peers Marketing Corporation at one hundred pesos a share or a total par value of eight thousand pesos. Po paid two thousand pesos or twenty-five percent of the amount of his subscription. No certificate of stock was issued to him or, for that matter, to any incorporator, subscriber or stockholder.

On April 2, 1966 Po sold to Ricardo A. Nava for two thousand pesos twenty of his eighty shares. In the deed of sale Po represented that he was "the absolute and registered owner of twenty shares" of Peers Marketing Corporation.

Nava requested the officers of the corporation to register the sale in the books of the corporation. The request was denied because Po has not paid fully the amount of his subscription. Nava was informed that Po was delinquent in the payment of the balance due on his subscription and that the corporation had a claim on his entire subscription of eighty shares which included the twenty shares that had been sold to Nava.

On December 21, 1966 Nava filed this mandamus action in the Court of First Instance of Negros Occidental, Bacolod City Branch to compel the corporation and Renato R. Cusi and Amparo Cusi, its executive vice-president and secretary, respectively, to register the said twenty shares in Nava's name in the corporation's transfer book.

The respondents in their answer pleaded the defense that no shares of stock against which the corporation holds an unpaid claim are transferable in the books of the corporation.

After hearing, the trial court dismissed the petition. Nava appealed on the ground that the decision "is contrary to law". His sole assignment of error is that the trial court erred in applying the ruling in *Fua Cun vs. Summers and China Banking Corporation*, 44 Phil. 705 to justify respondents' refusal in registering the twenty shares in Nava's name in the books of the corporation.

The rule enunciated in the *Fua Cun* case is that payment of one-half of the subscription does not entitle the subscriber to a certificate of stock for one-half of the number of shares subscribed.

Appellant Nava contends that the *Fua Cun* case was decided under section 36 of the Corporation Law which provides that "no certificate of stock shall be issued to a subscriber as fully paid up until the full par value thereof has been paid by him to the corporation". Section 36 was amended by Act No. 3518. It is now section 37. Section 37 provides that "no certificate of stock shall be issued to a subscriber as fully paid up until the full par value thereof, or the full subscription in case of no par stock, has been paid by him to the corporation".

The issue is whether the officers of Peers Marketing Corporation can be compelled by mandamus to enter in its stock and transfer book the sale made by Po to Nava of the twenty shares forming part of Po's subscription of eighty shares, with a total par value of P8,000 and for which Po had paid only P2,000, it being admitted that the corporation has an unpaid claim of P6,000 as the balance due on Po's subscription and that the twenty shares are not covered by any stock certificate.

Apparently, no provision of the by-laws of the corporation covers that situation. The parties did not bother to submit in evidence the by-laws nor invoke any of its provisions. The corporation can include in its by-laws rules, not inconsistent with law, governing the transfer of its shares of stock (Sec. 13[7], Act No. 1459; *Fleischer vs. Botica Nolasco Co.*, 47 Phil. 583, 589).

We hold that the transfer made by Po to Nava is not the "alienation, sale, or transfer of stock" that is supposed to be recorded in the stock and transfer book, as contemplated in section 52 of the Corporation Law.

As a rule, the shares which may be alienated are those which are covered by certificates of stock, as shown in the following provisions of the Corporation Law and as intimated in *Hager vs. Bryan*, 19 Phil. 138 (overruling the decision in *Hager vs. Bryan*, 21 Phil. 523. See 19 Phil. 616, notes and *Hodges vs. Lezama*, 14 SCRA 1030).

"SEC. 35. The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or the vice-president, countersigned by the secretary or clerk and sealed with the seal of the corporation, shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate indorsed by the owner or his attorney in fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is entered and noted upon the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate, and the number of shares transferred.

"No share of stock against which the corporation holds any unpaid claim shall be transferable on the books of the corporation.

"SEC. 36. (re voting trust agreement) x x x.

"xxx xxx xxx.

"The certificates of stock so transferred shall be surrendered and cancelled, and new certificates therefor issued to such person or persons, or corporation, as such trustee or trustees, in which new certificates it shall appear that they are issued pursuant to said agreement.

"xxx xxx xxx."

(Italics supplied).

(In the case of nonstock corporations a membership certificate is usually issued. *Lee E. Won vs. Wack Wack Golf & Country Club, Inc.*, 104 Phil. 466; *Wack Wack Golf & Country Club, Inc. vs. Won*, L-23851, March 26, 1976, 70 SCRA 165).

As prescribed in section 35, shares of stock may be transferred by delivery to the transferee of the certificate properly indorsed. "Title may be vested in the transferee by delivery of the certificate with a written assignment or indorsement thereof" (18 C. J. S. 928). There should be compliance with the mode of transfer prescribed by law (18 C. J. S. 930).

The usual practice is for the stockholder to sign the form on the back of the stock certificate. The certificate may thereafter be transferred from one person to another. If the holder of the certificate desires to assume the legal rights of a shareholder to enable him to vote at corporate elections and to receive dividends, he fills up the blanks

in the form by inserting his own name as transferee. Then he delivers the certificate to the secretary of the corporation so that the transfer may be entered in the corporation's books. The certificate is then surrendered and a new one issued to the transferee. (*Hager vs. Bryan*, 19 Phil. 138, 143-4).

That procedure cannot be followed in the instant case because, as already noted, the twenty shares in question are not covered by any certificate of stock in Po's name. Moreover, the corporation has a claim on the said shares for the unpaid balance of Po's subscription. A stock subscription is a subsisting liability from the time the subscription is made. The subscriber is as much bound to pay his subscription as he would be to pay any other debt. The right of the corporation to demand payment is no less incontestable. (*Velasco vs. Poizat*, 37 Phil. 802; *Lumanlan vs. Cura*, 59 Phil. 746).

A corporation cannot release an original subscriber from paying for his shares without a valuable consideration (*Philippine National Bank vs. Bitulok Sawmill, Inc.*, L-24177-85, June 29, 1968, 23 SCRA 1366) or without the unanimous consent of the stockholders (*Lingayen Gulf Electric Power Co., Inc. vs. Bal-tazar*, 93 Phil. 404).

Under the facts of this case, there is no clear legal duty on the part of the officers of the corporation to register the twenty shares in Nava's name. Hence, there is no cause of action for mandamus.

Nava argues that under section 37 a certificate of stock may be issued for shares the par value of which have already been paid for although the entire subscription has not been fully paid. He contends that Peers Marketing Corporation should issue a certificate of stock for the twenty shares, notwithstanding that Po had not paid fully his subscription for the eighty shares, because section 37 requires full payment for the subscription, as a condition precedent for the issuance of the certificate of stock, only in the case of no par stock.

Nava relies on *Baltazar vs. Lingayen Gulf Electric Power Co., Inc.*, L-16236-38, June 30, 1965, 14 SCRA 522, where it was held that section 37 "requires as a condition before a share-holder can vote his shares, that his full subscription be paid in the case of no par value stock; and in case of stock corporation with par value, the stockholder can vote the shares fully paid by him only, irrespective of the unpaid delinquent shares".

There is no parallelism between this case and the *Baltazar* case. It is noteworthy that in the *Baltazar* case the stockholder, an incorporator, was the holder of a certificate of stock for the shares the par value of which had been paid by him. The issue was whether the said shares had voting rights although the incorporator had not paid fully the total amount of his subscription. That is not the issue in this case.

In the *Baltazar* case, it was held that where a stockholder subscribed for a certain number of shares with par value and he made a partial payment and was issued a certificate for the shares covered by his partial payment, he is entitled to vote the said shares, although he has not paid the balance of his subscription and a call or demand had been made for the payment of the par value of the delinquent shares.

As already stressed, in this case no stock certificate was issued to Po. Without the stock certificate, which is the evidence of ownership of corporate stock, the assignment of corporate shares is effective only between the parties to the transaction (*Davis vs. Wachter*, 140 So. 361).

The delivery of the stock certificate, which represents the shares to be alienated, is essential for the protection of both the corporation and its stockholders (*Smallwood vs. Moretti*, 128 So. 2d 628).

IN VIEW OF THE FOREGOING CONSIDERATIONS , the trial court's judgment dismissing the petition for mandamus is affirmed. Costs against the petitioner-appellant.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

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