

LINGAYEN GULF ELECTRIC POWER COMPANY, INC., PLAINTIFF AND APPELLANT, VS. IRINEO BALTAZAR, DEFENDANT AND APPELLEE.

G. R. No. L-4824. June 30, 1953

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

These two cases here on appeal stem from the same case, that of civil case No. 10944 of the Court of First Instance of Pangasinan. From the trial court's decision, plaintiff Lingayen Gulf Electric Power Company, Inc. appealed directly to this court under G. R. No. L-4824. Defendant Ireneo Baltazar appealed to the Court of Appeals. By a resolution of that appellate tribunal, the appeal was certified to this court pursuant to section 17, (5) and (6) of the Judiciary Act of 1948, and is now listed here under G. R. No. L-6344.

The main facts of the case are not disputed, and we are reproducing and making our own the relation of facts contained in the decision appealed from.

"The plaintiff, Lingayen Gulf Electric Power Company is a domestic corporation with an authorized capital stock of P300,000 divided into 3,000 shares with a par value of P100 per share. The defendant, Ireneo Baltazar appears to have subscribed for 600 shares on account of which he had paid upon the organization of the corporation the sum of P15,000. (See Exhibit A, page 2). After incorporation, the defendant made further payments on account of his subscription, leaving a balance of P18,500 unpaid for, which amount, the plaintiff now claims in this action.

"On July 23, 1946, a majority of the stockholders of the corporation, among them the herein defendant, held a meeting and adopted stockholders' resolution No. 17. By said resolution, it was agreed upon by the stockholders present to call the balance of all unpaid subscribed capital stock as of July 23, 1946, the first 50 per cent payable within 60 days beginning August 1, 1946, and the remaining 50 per cent payable within 60 days beginning October 1, 1946. The resolution also provided, that all unpaid subscription after the due dates of both calls would be subject to 12 per cent interest per annum. Lastly, the resolution provided, that after the expiration of 60 days' grace which would be on December 1, 1946, for the first call, and on February 1, 1947, for the second call, all subscribed stocks remaining unpaid would revert to the corporation. (See Exhibit F and Exhibit I).

"On September 22, 1946, the plaintiff corporation wrote a letter to the defendant reminding him that the first 50 per cent of his unpaid subscription would be due on October 1, 1946. The plaintiff requested the defendant to 'kindly advise the company thru the undersigned your decision regarding this matter.' (See Exhibit 4). The defendant answered on September 25, 1946, asking the corporation that he be allowed to pay his unpaid subscription by February 1, 1947. In his answer, the defendant also agreed that if he could not pay the balance of his subscription by February 1, 1947, his unpaid subscription would be reverted to the corporation. (See Exhibit 5).

"On December 19, 1947, the defendant wrote another letter to the members of the Board of Directors of the plaintiff corporation, offering to withdraw completely from the corporation by selling out to the corporation all his shares of stock in the total amount of P23,000. (See Exhibit 8). Apparently this offer of the defendant was

left unacted upon by the plaintiff.

"On April 17, 1948, the Board of Directors of the plaintiff corporation held a meeting, and in the course of the said meeting they adopted Resolution No. 17. This resolution in effect set aside the stockholders resolution approved on June 23, 1946 (Exhibit D), on the ground that said stockholders' resolution was null and void, and because the plaintiff corporation was not in a financial position to absorb the unpaid balance of the subscribed capital stock. At the said meeting the directors also decided to call 50 per cent of the unpaid subscription within 30 days from April 17, 1948, the call payable within 60 days from receipt of notice from the Secretary-Treasurer. This resolution also authorized legal counsel of the company to take all the necessary legal steps for the collection of the payment of the call. (See Exhibit E-2).

"On June 10, 1949, the stockholders of the corporation held another meeting in which the stockholders were all present, either in person or by proxy. At such meeting, the stockholders adopted resolution No. 4, whereby it was agreed to revalue the stocks and assets of the company so as to attract outside investors to put in money for the rehabilitation of the company. The president was authorized to make all arrangement for such appraisal and the Secretary to call a meeting upon completion of the reassessment. (See Exhibit 2).

"It was admitted by the defendant that he received notice from the Secretary-Treasurer of the company, demanding payment of the unpaid balance of his subscription. It was agreed by the parties that the call of the Board of Directors was not published in a newspaper of general circulation as required by section 40 of the Corporation Law.

"On September 28, 1949, the legal counsel of the plaintiff corporation wrote a letter to the defendant, demanding the payment of the unpaid balance of his subscription amounting to P18,500. Copy of this letter was sent by registered mail to the defendant on September 29, 1949. (See Exhibit G). The defendant ignored the said demand. Hence this action.

"The defendant, in his answer, disclaims liability to the plaintiff corporation on the following grounds:

'1. That the plaintiffs' action is premature because there was no valid call; and

'2. That granting that there was a valid call, he was released from the obligation of the balance of his subscription by stockholders' resolution No. 17 and No. 4.'

"By way of counterclaim, the defendant also claims from the plaintiff a reasonable compensation at the rate of P700 per month as president of the company, for the period from March 1, 1946 to December 31, 1948.

"In the light of the foregoing undisputed facts, the only questions are as follows:

'1. Was the call Exhibit E-2 valid?

'2. Was the defendant released from the obligation of the unpaid balance of his subscription by virtue of stockholders' resolution Nos. 17 and 4?

'3. Is the defendant entitled to compensation as president of the plaintiff corporation?' "

In an exhaustive and well prepared decision, Judge M. Mejia of the lower court found that the call for payment embodied in resolution No. 17 of July 23, 1946 was null and void for lack of publication; consequently, he dismissed the complaint as premature. He further held said resolution null and void in so far as it tried to relieve the defendant from liability on his unpaid subscription, on the ground that the resolution was not approved by all the stockholders of the corporation. He also dismissed the defendant's counterclaim for compensation as president of the corporation.

Inasmuch as in the two appeals, the assignment of errors are related to each other, and because they refer to the same case, we propose to determine both appeals in one single decision.

We agree with the lower court that the law requires that notice of any call for the payment of unpaid subscription should be made not only personally but also by publication. This is clear from the provisions of section 40 of the Corporation Law, Act No. 1459, as amended, which reads as follows:

"SEC. 40. Notice of call for unpaid subscriptions must be either personally served upon each stockholder or deposited in the post-office, postage prepaid, addressed to him at his place of residence, if known, and if not known, addressed to the place where the principal office of the corporation is situated. The notice must also be published once a week for four successive weeks in some newspaper of general circulation devoted to the publication of general news published at the place where the principal office of the corporation is established or located, and posted in some prominent place at the works of the corporation if any such there be. If there be no newspaper published at the place where the principal office of the corporation is established or located, then such notice may be published in any newspaper of general news in the Philippines."

It will be noted that section 40 is mandatory as regards publication, using the word "must". As correctly stated by the trial court, the reason for the mandatory provision is not only to assure notice to all subscribers, but also to assure equality and uniformity in the assessment on stockholders. (14 C. J. 639).

This rule finds support in authorities on corporation law, such as, Thompson on Corporations, Vol. 5, 3rd edition, pages 588-590, from which we make the following quotation:

"SEC. 3744. Provisions requiring notice of calls.—The governing statute, charter or by-laws usually require that notice of calls be given the subscriber or stockholder. If any particular notice or demand is required by either of these, or by the contract of subscription, then such notice or demand must be given, and must be alleged and proved in order to maintain an action for the call.

* * *.

"SEC. 3745. Notice.-Compliance with requirements—From what has preceded it is clear that where any particular form or kind of notice is required, such form or kind must be given—the requirement must be complied with. Thus, where the charter expressly required notice to be given in certain newspapers for a certain number of days, the corporation must show compliance with the conditions before recovery on the call. An action is ordinarily made effective by notice thereof to the subscribers, in accordance with the by-laws or general regulations of the corporation in that regard. So, where there are statutory or other regulations as to the form and sufficiency of the notice, these must be followed. Thus, where such a notice was required to be signed by the directors, a notice with the names of the directors signed by a clerk, was held insufficient. These cases and others proceed on the theory that where the manner of giving notice is prescribed by law every condition precedent must be strictly and literally complied with." (Thompson on Corporations, Vol. 5, 3rd ed.)

This view is shared by Justice Fisher. In his book "The Philippine Law on Stock Corporations" he says: "Not only must personal notice be given in one of these manners, but the notice must also be published once a week, for four consecutive weeks, in some newspaper." (p.110.)

We find the citation of authorities made by plaintiff and appellant inapplicable. In the case of Velasco vs. Poizat (37 Phil. 805), the corporation involved was insolvent, in which case all unpaid stock subscriptions become payable on demand and are immediately recoverable in an action instituted by the assignee. Said the court in that case:

"* * * it is now quite well settled that when the corporation becomes insolvent, with proceedings instituted by creditors to wind up and distribute its assets, no call or assessment is necessary before the institution of suits to collect unpaid balance on subscription."

But when the corporation is a solvent concern, the rule is:

"It is again insisted that plaintiffs cannot recover because the suit was not preceded by a call or assessment against the defendant as a subscriber, and that until this is done no right of action accrues. In a suit by a solvent going corporation to collect a subscription, and in certain suits provided by statute this would be true; * * *." (Id.)

Going to the claim of defendant and appellant that Resolution No. 17 of 1946 released him from the obligation to pay for his unpaid subscription, the authorities are generally agreed that in order to effect the release, there must be unanimous consent of the stockholders of the corporation. We quote some authorities:

"Subject to certain exceptions, considered in subdivision (3) of this section, the general rule is that a valid and binding subscription for stock of a corporation cannot be cancelled so as to release the subscriber from liability thereon without the consent of all the stockholders or subscribers. Furthermore, a subscription cannot be cancelled by the company, even under a secret or collateral agreement for cancellation made with the subscriber at the time of the subscription, as against persons who subsequently, subscribed or purchased without notice of such agreement." (18 C.J.S. 874).

"(3) Exceptions.

"In particular circumstances, as where it is given pursuant to a bona fide compromise, or to set off a debt due from the corporation, a release, supported by consideration, will be effectual as against dissenting stockholders and subsequent and existing creditors. A release which might originally have been held invalid may be sustained after a considerable lapse of time." (18 C.J.S. 874).

In the present case, the release claimed by defendant and appellant does not fall under the exception above referred to, because it was not given pursuant to a bona fide compromise, or to set off a debt due from the corporation, and there was no consideration for it.

Another authority:

"SEC. 850. Unanimous consent of stockholders necessary to release subscriber.—* * * It may be asserted as the first rule under this proposition that, after a valid subscription to the capital stock of a corporation has been made and accepted, there can be no cancellation or release from the obligation without the consent of the corporation and all the stockholders; * * *." (2 Thompson on Corporations, p. 186).

He states the reason for the rule as follows:

"SEC. 855. Right to withdraw as against subscribers.—A contract of subscription is, at least in the sense which creates an estoppel, a contract among the several subscribers. For this reason no one of the subscribers can withdraw from the contract without the consent of all the others, and thereby diminish, without the universal consent, the common fund in which all have acquired an interest * * * (2 Thompson on Corporations, p. 194).

As already found by the trial court, the release attempted in Resolution No. 17 of 1946 was not valid for lack of a unanimous vote. It found that at least seven stockholders were absent from the meeting when said resolution was approved.

Defendant and appellant, however, contends that after dismissing the complaint for being premature, there was no necessity or reason for the trial court to go further and say that defendant was not validly released from the payment for his unpaid subscription. It must be borne in mind, however, that this was one of the principal issues involved in the case and the trial court was called upon to pass upon it, because unless so passed upon and determined, it might decisively affect the case on appeal. Supposing that on appeal the appellate court decides that the call was valid, then it would be important to know whether or not in spite of the validity of the call, defendant was nevertheless not liable because he had been validly released by a resolution of the corporation. If that question was not decided by the trial court, and naturally was not touched upon in the appeal, then the appellate

court would have no occasion to pass upon it, and it might be necessary to bring another action to determine the point, which means multiplicity of suits. Moreover, the authority given to the courts to render judgments for declaratory relief in order to determine the rights or duties of parties over a certain transaction or under a certain written instrument, or to remove the uncertainty or controversy over the same (Rule 66 of the Rules of Court), justified the trial court in passing upon this question of release.

As regards the compensation of President claimed by defendant and appellant, it is clear that he is not entitled to the same. The by-laws of the company are silent as to the salary of the President. And, while resolutions of the incorporators and stockholders (Exhibits G-1 and I-1) provide salaries for the general manager, secretary-treasurer and other employees, there was no provision for the salary of the President. On the other hand, other resolutions (Exhibits H-1 and J-3) provide for per diems to be paid to the President and the directors of each meeting attended, P10 for the President and P8 for each director, which were later increased to P25 and P15, respectively. This leads to the conclusion that the President and the board of directors were expected to serve without salary, and that the per diems paid to them were sufficient compensation for their services. Furthermore, for defendant's several years of service as President and up to the filing of the action against him, he never filed a claim for salary. He thought of claiming it only when this suit was brought against him.

In conclusion we hold that under the Corporation Law, notice of call for payment for unpaid subscribed stock must be published, except when the corporation is insolvent, in which case, payment is immediately demandable. We also rule that release from such payment must be made by all the stockholders.

In view of the foregoing and finding no reversible error in the decision appealed, the same is hereby affirmed.

No pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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