

MIGUEL VELASCO, ASSIGNEE OF THE PHILIPPINE CHEMICAL PRODUCT CO. (LTD.), PLAINTIFF AND APPELLANT, VS. JEAN M. POIZAT, DEFENDANT AND APPELLEE.*G.R. No. 11528. March 15, 1918*

Ponente: STREET, J.

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From the amended complaint filed in this cause upon February 5, 1915, it appears that the plaintiff, as assignee in insolvency of "The Philippine Chemical Product Company" (Ltd.) is seeking to recover of the defendant, Jean M. Poizat, the sum of P1,500, upon a subscription made by him to the corporate stock of said company. It appears that the corporation in question was originally organized by several residents of the city of Manila, where the company had its principal place of business, with a capital of P50,000, divided into 500 shares. The defendant subscribed for 20 shares of the stock of the company, and paid in upon his subscription the sum of P500, the par value of 5 shares. The action was brought to recover the amount subscribed upon the remaining shares.

It appears that the defendant was a stockholder in the company from the inception of the enterprise, and for sometime acted as its treasurer and manager. While serving in this capacity he called in and collected all subscriptions to the capital stock of the company, except the aforesaid 15 shares subscribed by himself and another 15 shares owned by Jose R. Infante.

Upon July 13, 1914, a meeting of the board of directors of the company was held at which a majority of the stock was represented. Upon this occasion two resolutions, important to be here noted, were adopted. The first was a proposal that the directors, or shareholders, of the company should make good by new subscriptions, in proportion to their respective holdings, 15 shares which had been surrendered by Infante. It seems that this shareholder had already paid 25 per cent of his subscription upon 20 shares, leaving 15 shares unpaid for, and an understanding had been reached by him and the management by which he was to be released from the obligation of his subscription, it being understood that what he had already paid should not be refunded. Accordingly the directors present at this meeting subscribed P1,200 toward taking up his shares, leaving a deficiency of P300 to be recovered by voluntary subscriptions from stockholders not present at the meeting.

The other proposition was to the effect that Juan [Jean] M. Poizat, who was absent, should be required to pay the amount of his subscription upon the 15 shares for which he was still indebted to the company. The resolution further provided that, in case he should refuse to make such payment, the management of the corporation should be authorized to undertake judicial proceedings against him. When notification of this resolution reached Poizat through the mail it evoked from him a manifestation of surprise and pain, which found expression in a letter written by him in reply, dated July 27, 1914, and addressed to Velasco, as. treasurer and administrator. In this letter Poizat states that he had been given to understand by some member of the board of directors that he was to be relieved from his subscription upon the terms conceded to Infante; and he added:

"My desire to be relieved from the payment of the remaining 75 per cent arises from the poor opinion which I

entertain of the business and the faint hope of ever recovering any money invested. In consequence, I prefer to lose the whole of the 25 per cent I have already paid rather than to continue investing more money in what I consider to be a ruinous proposition."

Within a short while the unfavorable opinion entertained by Poizat as to the prospect of the company was found to be fully justified, as the company soon went into voluntary insolvency, Velasco being named as the assignee. He qualified at once by giving bond, and was duly inducted into the office of assignee upon November 25, 1914, by virtue of a formal transfer executed by the clerk in pursuance of section 32 of Act No. 1956.

The answer of the defendant consisted of a general denial and a so-called special defense, consisting of a concatenation of statements more appropriate for a demurrer than as material for a special defense. The principal contention is that the call made by the board of directors of the company on July 13, 1914, was not made pursuant to the requirements of sections 37 and 38 of the Corporation Law (Act No. 1459), and in particular that the action was instituted before the expiration of the 30 days specified in section 38.

At the hearing of the Court of First Instance, judgment was rendered in favor of the defendant, and the complaint was dismissed. From this action the plaintiff has appealed.

We think that Poizat is liable upon this subscription. A stock subscription is a contract between the corporation on one side, and the subscriber on the other, and courts will enforce it for or against either. It is a rule, accepted by the Supreme Court of the United States, that a subscription for shares of stock does not require an express promise to pay the amount subscribed, as the law implies a promise to pay on the part of the subscriber. (7 Ruling Case Law, sec. 191.) Section 36 of the Corporation Law clearly recognizes that a stock subscription is a subsisting liability from the time the subscription is made, since it requires the subscriber to pay interest quarterly from that date unless he is relieved from such liability by the by-laws of the corporation. The subscriber is as much bound to pay the amount of the share subscribed by him as he would be to pay any other debt, and the right of the company to demand payment is no less incontestable.

The provisions of the Corporation Law (Act No. 1459) give recognition to two remedies for the enforcement of stock subscriptions. The first and most special remedy given by the statute consists in permitting the corporation to put up the unpaid stock for sale and dispose of it for the account of the delinquent subscriber. In this case the provisions of sections 38 to 48, inclusive, of the Corporation Law are applicable and must be followed. The other remedy is by action in court, concerning which we find in section 49 the following provision:

"Nothing in this Act shall prevent the directors from collecting, by action in any court of proper jurisdiction, the amount due on any unpaid subscription, together with accrued interest and costs and expenses incurred."

It is generally accepted doctrine that the statutory right to sell the subscriber's stock is merely a remedy in addition to that which proceeds by action in court; and it has been held that the ordinary legal remedy by action exists even though no express mention thereof is made in the statute. (*Instone vs. Frankfort Bridge Co.*, 2 Bibb [Ky.], 576; 5 Am. Dec. 638.)

No attempt is made in the Corporation Law to define the precise conditions under which an action may be maintained upon a stock subscription, as such conditions should be determined with reference to the rules governing contract liability in general; and where it appears as in this case that a matured stock subscription is unpaid, none of the provisions contained in sections 38 to 48, inclusive, of Act No. 1459 can be permitted to obstruct or impede the action to recover thereon. By virtue of the first subsection of section 36 of the Insolvency Law (Act No. 1956) the assignee of the insolvent corporation succeeds to all the corporate rights of action vested in the corporation prior to its insolvency; and the assignee therefore has the same freedom with respect to suing

upon, a stock subscription as the directors themselves would have had under section 49 above cited.

But there is another reason why the present plaintiff must prevail in this case, even supposing that the failure of the directors to comply with the requirements of the provisions of sections 38 to 48, inclusive, of Act No. 1459 might have been an obstacle to a recovery by the corporation itself. That reason is this: When insolvency supervenes upon a corporation and the court assumes jurisdiction to wind it up, all unpaid stock subscriptions become payable on demand, and are at once recoverable in an action instituted by the assignee or receiver appointed by the court. This rule apparently had its origin in a recognition of the principle that a court of equity, having jurisdiction of the insolvency proceedings, could, if necessary, make the call itself, in its capacity as successor to the powers exercised by the board of directors of the defunct company. Later a further rule gained recognition to the effect that the receiver or assignee, in an action instituted by proper authority, could himself proceed to collect the subscription without the necessity of any prior call whatever. This conclusion is well supported by reference to the following authorities:

"* * * a court of equity may enforce payment of stock subscriptions, although there have been no calls for them by the company." (Hatch vs. Dana, 101 U. S., 205.)

"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; but 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 balances on subscription." (Ross-Meehan Shoe F. Co. vs. Southern Malleable Iron Co., 72 Fed., 957, 960; see also Henry vs. Vermillion etc. R. R. Co., 17 Ohio, 187, and Thompson on Corporations, 2d ed., vol. 3, sec. 2697.)

It evidently cannot be permitted that a subscriber should escape from his lawful obligation by reason of the failure of the officers of the corporation to perform their duty in making a call; and when the original mode of making the call becomes impracticable, the obligation must be treated as due upon demand. If the corporation were still an active entity, and this action should be dismissed for irregularity in the making of the call, other steps could be taken by the board to cure the defect and another action could be brought; but where the company is being wound up, no such procedure would be practicable. The better doctrine is that when insolvency supervenes all unpaid subscriptions become at once due and enforceable.

The printed bill of exceptions in this cause does not contain the original complaint, nor does it state who was plaintiff therein or the date when the action was instituted. It may, however, be gathered from the papers transmitted to this court that the action was originally instituted in the name of the Philippine Chemical Product Co. (Ltd.), prior to its insolvency, and that later the assignee was substituted as plaintiff and then filed the amended complaint, with the permission of the court. Now, if we concede that no right of action existed when the original complaint was filed, a right of action certainly existed when the assignee filed his amended complaint; and as the bill of exceptions fails to show that any exception was taken to the action of the court in allowing the amended complaint to be filed, no objection would be here entertained on the ground that the action was prematurely brought.

The circumstance that the board of directors in their meeting of July 13, 1914, resolved to release Infante from his obligation upon a subscription for 15 shares is in no wise prejudicial to the right of the corporation or its assignee to recover from Poizat upon a subscription made by him. In releasing Infante the board transcended its powers, and he no doubt still remained liable on such of his shares as were not taken up and paid for by other persons.

"The general doctrine is that the corporation has no legal capacity to release an original subscriber to its capital

stock from the obligation of paying for his shares, in whole or in part, * * *" (10 Cyc, 450.)

The suggestion contained in Poizat's letter of July 27, 1914, to the effect that he understood that he was to be relieved upon the same terms as Infante is, for the same reason, of no merit as matter of defense, even if an agreement to that effect had been duly proved.

From what has been said it is manifest that the defendant is liable for P1,500, the amount of his subscription upon the unpaid shares. Under section 36 of the Corporation Law he is also liable for interest at the lawful rate from the date of his subscription, unless relieved from this liability by the by-laws of the company. These by-laws have not been introduced in evidence and there is no proof showing the exact date upon which the subscription was made, though it is alleged in the original complaint that the company was organized upon March 23, 1914. This allegation is not admitted in the agreed statement of facts. The defendant, however, inferentially admits in his letter of July 27, 1914, that his subscription had been made prior to July 13, 1914. It results that in our opinion he should be held liable for interest from that date.

The judgment of the lower court is therefore reversed, and judgment will be rendered in favor of the plaintiff and against the defendant for the sum of one thousand five hundred pesos (P1,500), with interest from July 13, 1914, and costs of both instances. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Araullo, Malcolm, Avanceña, and Fisher, JJ., concur.

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